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Montana's Annexation Laws: An Evaluation

November 1980

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MONTANA'S ANNEXATION LAWS: AN EVALUATION

A REPORT TO THE FORTY-SEVENTH LEGISLATURE

STUDY COMMITTEE ON ANNEXATION LAWS

December 1980

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I. SUMMARY OF RECOMMENDATIONS

The Study Committee on Annexation Laws recommends that the 1981 Montana Legislature:

1) Enact a bill eliminating the distinction between rights of resident and nonresident freeholders in annexation proceedings, thus also removing the differences between procedures for first class cities versus second and third class cities and towns;

2) Enact a bill clarifying how municipalities must provide public services to newly annexed areas;

3) Enact a bill deleting certain restrictions on annexation of wholly surrounded land, thus eliminating the exemptions, except for bona fide agricultural land, from the statutes, allowing annexation without protest of unincorporated "islands" within a municipality, and prohibiting "strip annexation";

4) Enact a bill removing restrictions on annexation of land used for industrial, manufacturing, and other purposes, consequently giving freeholders of industrial and manufacturing property a right of protest equal to that of other freeholders in the area proposed to be annexed;

5) Enact a bill providing for joint hearings and coordination of requirements for annexation and subdivision approval whenever possible;

6) Enact a bill allowing municipalities to select the annexation procedure appropriate to each annexation situation; and;

7) Enact a bill prescribing conditions under which land is presumed to be annexed and may be so recorded.

The Study Committee on Annexation Laws intends, with the adoption of the above recommendations, to provide a fair, comprehensive, and comprehensible body of annexation procedures to enable the people of the state, especially urban dwellers, to be served by municipal governments responding adequately to urban growth.

II. HOUSE JOINT RESOLUTION NO. 54

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA FOR AN INTERIM STUDY OF MONTANA'S ANNEXATION LAWS.

WHEREAS, it is in the best interest of the people of Montana to allow municipal growth in an orderly and planned manner while at the same time maintaining the balance of interest existing between those living within and those living outside a municipality's boundaries; and

WHEREAS, Montana's present annexation laws were adopted piecemeal, contain contradictions, and are in need of revision; and

WHEREAS, the piecemeal approach to annexation laws has not satisfactorily met current needs and has directly contributed to greater confusion over workable annexation procedures and processes in numerous Montana communities; and

WHEREAS, in many of Montana's communities existing annexation laws are causing or contributing to indiscriminate and disorderly growth patterns; and

WHEREAS, in many cases Montana's annexation laws may be forcing citizens of municipalities to be annexed without the provision of adequate municipal services extended and provided to them; and

WHEREAS, in other communities annexation is being frustrated by a confusing tangle of laws that are contradictory or unworkable; and

WHEREAS, the status of fire districts in the event of annexation should be closely scrutinized, being a particularly difficult problem related to annexation; and

WHEREAS, many communities are facing the problem of uncontrolled urban sprawl with many people residing on the perimeter of the municipality not within the corporate boundaries but deriving many benefits from the municipality without paying their fair share for these services; and

WHEREAS, the numerous annexation-related bills introduced in the 46th Legislature indicate a statewide concern for the inadequacies of Montana's present annexation laws.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Committee on Priorities assign to an appropriate interim committee a study of all laws relating to annexation to identify conflicts, duplications, and inadequacies and to prepare appropriate legislation for the 47th Legislature that will provide Montana with a statutory framework which insures a comprehensive and workable approach to annexation.

(2) That the committee consult with the Department of Community Affairs, local governmental officials, and interested citizens during the course of the study.

(3) That the committee study various methods for resolving identified problems and examine alternatives used in other states for reasonable annexation procedures.

(4) That the committee report its findings, recommendations, and appropriate remedial legislation to the 47th Legislature.

Approved April 2, 1979.

III. INTRODUCTION

Persistently arising throughout the 1979 legislative session, the issues of municipal growth and annexation caused considerable controversy among legislators, city officials, and citizens residing in urban fringe areas. The Legislature considered at least 12 bills directly related to Montana's annexation procedures. While several of those bills received legislative approval, a consensus emerged, as the session drew to a close, that those bills dealt with only a fraction of the problems associated with the state's annexation laws. City officials and dwellers complained that those living in unannexed urban fringe areas were receiving municipal benefits and services that they were not equitably paying for. Those people living in areas surrounding the cities asserted that they were happy with less government and lower property taxes and resented being forced into annexation that would give them no real benefits while only raising those taxes.

After the Legislature repeatedly debated these issues and as the 1979 session neared adjournment, Rep. Budd Gould introduced HJR 54, which requested the establishment of an appropriate interim committee to study all laws relating to annexation in order to identify conflicts, duplications, and inadequacies in those laws. The resolution also requested that the committee assigned the study prepare appropriate legislation for the 47th Legislature that would provide Montana with a statutory framework ensuring a comprehensive and workable approach to annexation. HJR 54 received nearly unanimous approval in both houses and was ranked first in priority under the new study selection process mandated by HB 237 (Ch. 596, L. 1979). The Legislative Council, with the recommendations of the House and Senate Local Government Committee chairmen, then appointed an equally bipartisan committee consisting of four senators and four representatives who had expressed a desire to participate in the annexation study.

In July, 1979, the study committee began its work with the adoption of a study plan and preliminary identification of specific problems to be examined. The committee then proceeded to develop an understanding of Montana's present municipal annexation laws, compare those laws with those of other western states, review past annexation legislation to aid identification of specific annexation problems, and generally set the stage for taking annexation issues to the public. The committee placed considerable emphasis on testimony received throughout the study from city officials and residents of areas affected by annexation problems. Discussion proposals for remedying many of those inadequacies were submitted to the public in extensive hearings in Billings, Missoula, and Helena. After analyzing the public response to their discussion proposals, committee members began to develop many of them into the legislation appearing in the appendices to this report.

In this report the various elements of the committee's study are described, including a background analysis, legislative and judicial history, a comparison of Montana's annexation laws to other western states, and an analysis of the discussion proposals and recommended legislation subsequently developed by the committee. Many people contributed significantly to the completion of the annexation study. Among them are members of the Montana League of Cities and Towns, particularly city officials from Billings, Missoula, and Helena; The Missoula Freeholders' Association and other homeowners' organizations in the above communities; members of the Montana State Volunteer Fireman's Association; the League of Women Voters of Montana; the Department of Community Affairs; and other interested citizens. The committee and its staff are grateful for the essential participation of these organizations and individuals in the study.

IV. GENERAL BACKGROUND

Annexation is the method developed to keep an entire urban area under the management of a single city government by extending city boundaries as land on the fringe of the city is urbanized.[1] The annexation process is one of the oldest methods of dealing with the problems of urban and metropolitan growth. It has been used to control many urban problems by capturing the available tax base and stopping the proliferation of unplanned development that contributes to fragmented government and services. Proponents of annexation (usually the cities) assert that it provides a sound basis for planning, orderly growth, and standardization of services and facilities. It is also intended to minimize creation of multiple unincorporated places and special service districts within an area.[2]

Until the early 1900's, annexation proved to be a satisfactory method for providing for the expansion of city boundaries to adjacent areas that were becoming urbanized. Then, around the turn of the century, state legislatures began to alter their annexation laws to reflect the changing mood of rural and suburban residents toward the expansion of cities through annexation. Throughout the nation, state legislatures shifted the burden of approval of annexations from the cities themselves to the areas proposed to be annexed.

One of the most frequently cited publications on annexation, Adjusting Municipal Boundaries: Law and Practice, published by the National League of Cities in 1966, has grouped the various methods of annexation used throughout the states into five categories. A brief description of each of these categories is as follows:

1. Legislative Determination - Some states, particularly those in New England, lack any general law provisions for annexation. In this case, such as in Massachusetts, all annexations are by special acts of the legislature. Other states may have general law provisions, but annexation may also be accomplished by special act of the legislature, as in Nevada. While almost all states have used the special act method of annexation extensively during the last century, Montana has not. Both the 1889 Montana Constitution (Art. V, sec. 26) and the revised 1972 constitution (Art. V, sec. 12) prohibit the adoption of special or local acts "when a general act is, or can be made, applicable."[3]

In several states, the special act is the only viable annexation method because the general law methods are so complex or stringent as to be unusable. However, this method may be subject to the usual abuses of special and local legislation in that the best interests of the local residents may be lost to the vagaries of

legislative politics. In several states, however, the courts have required that special acts of annexation be held to a standard of contiguity, compactness, and provision of adequate services for the area to be annexed.

2. Popular determination. This category includes many different variations. In all cases, however, annexation by this method is achieved by a vote of the people or a petition from the majority of the people in the area to be annexed. Voting on the issue may occur only in the area proposed for annexation or in that area and in the existing city. Voters resolve the question by a simple majority or an extraordinary majority. City ordinance or petition of residents desiring annexation serve to initiate the proceedings. A few states prohibit the initiation of annexation by the city.

Another variation of the popular determination method is voluntary annexation by a 100 percent petition of property owners. This variation has seen wide use by developers in Florida. For example, a developer has a parcel of vacant land to be used for residential development. In exchange for water and sewer services from a city the developer annexes to the city before the area has any residents.

Most states employ some form of the popular determination method of annexation. The overall effect of this method is to restrict annexation. Voters generally resist changing the status quo, especially when the change results in higher taxes. This is true of both city and rural voters. While today in Montana annexation is thought of as something the cities want versus the desires of suburban or rural residents to retain their present status, in many areas of the country the opposite situation occurs. Often residents of fringe areas want to be annexed, but the city resists. This is usually the case when low income or minority areas would cost more in services than they would produce in taxes. The annexation of such an area might also be viewed by city residents as upsetting the political balance of the city. But more often then not, and particularly in Montana, the popular determination method works to the advantage of residents of adjacent prosperous areas that resist annexation because of potentially higher taxes. This resistance has led to the surburban cities and unincorporated urban areas that surround most American cities.

3. Municipal Determination

Included in this category are options ranging from simple passage of an annexation ordinance not subject to any form of citizen veto to annexation by ordinance only for city owned property. Generally, though, the common form of this method occurs when the law establishes specific criteria, such as provision of services, for the city to use in

determining whether an area should be annexed. States most frequently cited as using this method are Florida, Idaho, and North Carolina. In its strictest form, annexation by this method is subject to review only by the courts. But in several states, a popular safeguard, such as petition by a percentage of voters for an election or referendum on the question of annexation, is provided.

4. Judicial Determination. In every state the courts offer a recourse to those people dissatisfied with an annexation decision, but in Virginia the courts until recently have determined entirely the question of annexation. Recently, however, the Virginia legislature (after several years of controversy) adopted a package of bills designed to give some counties "immunity from annexation and to give statutory guidelines to annexation courts in deciding questions of annexation."[4] Proponents of this form of annexation hold that judicial determination minimizes the political factor and is more objective. Opponents argue that changing a city's boundaries is properly a political question. They also charge that this method puts the court in a quasi-legislative role and jeopardizes the doctrine of separation of powers. In fact a Florida annexation law in effect until 1974 that gave the courts certain discretionary powers in annexation questions was struck down by the State Supreme Court as an unconstitutional attempt to impose a legislative role for the judiciary.

5. Boundary Review Commission. Nine states provide for some form of commission or review agency with authority to resolve annexation issues. Minnesota pioneered this approach in 1959. These commissions may operate at various levels of government: state (Minnesota), regional (Oregon), or local (Nevada). The goal of this approach is to minimize political influences and maximize the objectivity of annexation decisions. Proponents maintain that this approach offers the benefits of the judicial determination system while providing for input from local experts. Opponents claim that a review commission composed of government officials cannot be objective due to the vested interests of those officials.[5]

Other Factors

Regardless of the methods of annexation used in a state, in many states statutes may favor incorporation and discourage annexation. This leads to "defensive incorporation," which creates many autonomous municipalities that duplicate services and provide for fragmented government. Under this situation, Florida incorporated 105 new cities in 1978 and Los Angeles and Orange Counties in California contain 101 autonomous cities.[6]

The Annexation Dilemma

In reviewing the various procedures for annexing fringe areas to municipalities, some observers argue that procedures favoring the city

> are opposed strongly by many manufacturing, industrial, and business interests, and by homeowner groups and private utilities; they fear increased taxes and regulation; utilities fear intrusion of city-owned utilities into their service areas; homeowners fear change in the character and identity of their neighborhoods through changes in zoning and building regulations and the imposition of fiscal responsibility for city-wide service.[7]

Contradicting the above arguments are those which maintain that unduly restrictive annexation laws contribute to governmental fragmentation, disorderly growth, and inequities in taxes and resources. Critics of restrictive annexation laws that favor the wishes of those who prefer to remain outside the city argue that these laws grant to a small percentage in a small area the power to frustrate substantial interests of the majority of city residents.[8] They insist that those receiving the benefits of the city should pay for those benefits and that growth should be "governed" by local government.

In order to know where Montana fits within these categories and conflicting arguments, it is necessary to trace the legislative and judicial history of Montana's annexation laws.

Legislative History

A 1974 article by Martin Burke in the Montana Law Review thoroughly traces the legislative and judicial development of Montana's annexation laws from 1895 to 1974. This section of the report will extract from that article the major points of interest to the committee and add material where necessary.

Montana's first annexation procedures were established in the Political Code of 1895 (sections 4724 - 4727). These statutes permitted cities to annex only contiguous land and required two elections once an ordinance to annex had been adopted. First city residents voted on the proposed annexation; then if a majority of those voting approved the annexation, the question was submitted to the voters residing in the area to be annexed. Only after approval by a majority of those electors would the annexation go into effect.

In 1905 the legislature repealed the original law and replaced it with one providing for city council annexation of land "which had been or may be platted" and which was also contiguous to existing city boundaries (Chapter 30, Laws of 1905). This statute essentially remains in effect as one of the eight annexation procedures available to cities today. Although the 1905 statute requires no election, its significance lies in the fact that the principle of "right of protest" by the resident freeholders of the area to be annexed was introduced. This principle is described as the greatest impediment to annexation

in Montana. Under this statute, the proposed annexation proceeds following adoption of a city council resolution unless a majority of the resident freeholders protest. If they do, the annexation may not take effect.

The 1925 legislature first made a distinction between annexation procedures for first class cities and those affecting second and third class cities and towns (Ch. 52, Laws of 1925). The procedures for all three classes of cities were similar, except that any freeholder of property proposed for annexation to a second or third class city or town may protest, while the requirement that a protester be a resident freeholder remained for first class cities. Despite legislative and judicial debate on the distinction over the succeeding years, it continues to exist today.

In 1945, the legislature first adopted (in Ch. 168, Laws of 1945) the alternative of annexation by petition (although exclusion by petition had been established eighteen years earlier). The 1945 act provided for a city election on the question of annexation upon petition by one-third of the resident freeholder electors of the area proposed to be annexed. The 1945 law limited annexation by petition to first class cities, a distinction that made voluntary annexation available in only a few areas until 1979 with the enactment of HB 365 (Ch. 641).

The 1945 legislature limited voluntary annexation by excluding any land used wholly or partially for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose. The same exclusion was later applied to annexation of wholly surrounded land and to industrial or manufacturing properties under 11-403, R.C.M. 1947.

Also in 1945, the legislature qualified the meaning of the term "contiguous" to hold that land would still be contiguous even though it was separated by a street, ditch, stream, river, or strip of unplatted land too small or narrow to be platted.

1957 brought the adoption of provisions for annexing by first class cities of unplatted contiguous land that had been surveyed and for which a certificate of survey had been filed (Ch. 239, L. of 1957). A statute allowing for annexation of contiguous government land was also approved (Ch. 189, L. of 1957). The 1959 legislature enacted a statute that gave first class cities the ability to annex any unplatted or platted tract or parcel wholly surrounded by the city (Ch. 238, L. of 1959). This statute's significance is marked by its lack of veto power for affected freeholders (except for the exclusions described above for mining, agricultural, etc. purposes). The "compulsory annexation" statute is described as being "a very important tool for the first class cities of the state."

In 1961, the legislature further restricted the annexation powers of first class cities by prohibiting the annexation of

land used for industrial or manufacturing purposes unless the owners of the land give their written consent (Ch. 217, L. of 1961). This and the other provisions restricting annexation of industrial, manufacturing, and other properties have been the subject of considerable debate in the legislature and in the courts.[9]

Of course one of the more significant changes in Montana's annexation laws since 1905 came with the adoption in 1974 of the Planned Community Development Act (Ch. 364, L. of 1974). HB 556 was introduced because its sponsors thought (and the legislature agreed) that existing annexation laws were discriminatory and caused areas to be annexed without adequate provision of services, that some cities were annexing only to gain a greater tax base, and that many areas adjacent to cities were deriving benefits from the city while not paying their fair share of the cost of those services. In adopting the Planned Community Development Act, the legislature attempted to develop the following policies as stated in the purpose section:

> (1) Sound urban development is essential to the continued economic development of this state and any annexation prepared must be well planned in advance.
>
> (2) Municipalities are created to provide urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development and future annexation must consider these principles.
>
> (3) Municipal boundaries should be extended, in accordance with legislative standards applicable throughout the state, to include such areas and to provide the high quality of governmental services needed for the public health, safety and welfare.
>
> (4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

The Act applies to all cities and towns and provides for annexation to be initiated by the city or by petition of 51% of the affected resident freeholders. If a majority of the resident freeholders of the territory to be annexed file written protests, annexation is precluded for at least one year. The provisions of the Act which distinguish it

from the other annexation statutes are the prohibitions against annexing until the municipality has adopted a comprehensive plan for the area and a plan for extension of services. An additional measure enabling resident freeholders to block annexation holds that if the extension of services plan requires capital improvement, they will be able to vote on the improvements. If that vote is unfavorable, the annexation may not take place.

No further changes in Montana's annexation statutes became law until 1977 when the legislature provided for written notice of a proposed annexation to all freeholders in territory to be joined to first class cities (Ch. 510, L. of 1977), even though only resident freeholders were still allowed to protest.

Also in 1977 the legislature amended slightly a provision of the Planned Community Development Act designed to protect rural fire districts. Chapter 81 (L. of 1977) provided an alternative procedure for annexing a single parcel of land and detracting that parcel from a fire district.

Another measure designed to protect private service providers in newly annexed areas was embodied in Chapter 131 (L. of 1977). This statute prohibited municipalities from offering competitive garbage and solid waste services in newly annexed areas for a period of three years unless the private service provider renders unsatisfactory service.

1979 brought several important changes to annexation laws in Montana. These include:

(1) Chapter 434, which extends the prohibition described in Ch. 131 (L. of 1977) above to five years and provides that the city may provide service only upon written petition by a majority of residents;

(2) Chapter 641, which extends the right of annexation by petition to all cities and provides that an election is not necessary when more than 50% of the resident freeholders of the area to be annexed petition for annexation; and

(3) Chapter 642, which reverses a decision by the Montana Supreme Court (see next section) that held that the Planned Community Development Act superseded the other forms of annexation where a conflict existed. Chapter 642 provides that each method of annexation is separate and distinct and also contains a provision allowing the municipality and the area to be annexed to mutually agree to waive provision of certain services where private interests can better provide service.

It should also be noted that in 1979 the confusing maze of different annexation procedures were recodified into six separate "parts" for more easy reference for those concerned.

Judicial History

In addition to an understanding of the legislative history of annexation law, it is necessary to examine how the courts have interpreted these statutes. Generally, the courts have treated annexation as a political matter under the exclusive control of the legislative branch. Unlike such states as Virginia and Florida, court review of annexation has been primarily limited in Montana to determining whether cities have followed the proper procedures established by the legislature. Thus the courts do not act on the substantive issue of a particular annexation. Instead they have decided questions of interpretation of statutory language and of constitutionality of various annexation procedures.

As outlined in the Montana Law Review article previously cited, the courts have issued opinions on the following areas of annexation law: the distinction in protest rights between first class and second and third class cities; the exclusion of industrial, manufacturing, and other properties; what is encompassed in annexation of "wholly surrounded" areas; and clarifying the definitions of "resident freeholder", "industrial or manufacturing" and "agricultural". The court's interpretations of these areas of law are briefly described in the following paragraphs.

1. Rights of Protest. While the legislature is not constitutionally required to even consider the desires of people living in areas proposed to be annexed, it allowed resident freeholders to protest annexation to first class cities and all property owners regardless of residency to protest annexation to second and third class cities. This distinction was challenged in two court actions, Harrison v. City of Missoula, 132 Mont. 591 (1957) and Burritt v. City of Butte, 161 Mont. 530, 508 P.2d 563 (1973). In the first case, the court unilaterally affirmed the right of the legislature to make such a distinction, since it was not required to give anybody the right of protest in the first place. In the second case, the court reaffirmed its first decision and stated that the distinction between classes of cities must be reasonable and not arbitrary, and must be substantially related to the object of the legislation. The differences between larger and smaller cities provided the basis for the distinction. Because larger cities have different and more complex problems than smaller cities, the court held that annexation could be made easier for larger cities by allowing only resident freeholders the right of protest.

2. Definition of Resident Freeholder. The definition of "resident freeholder" is of course important in determining who has a right to protest annexation. The Montana Supreme Court, in Kunesh v. City of Great Falls, 132 Mont. 285 (1957) and later in Brodie v. City of Missoula, 155 Mont. 185 (1970) determined that a resident freeholder is "one who is a resident within the area to be annexed, holding a present legal title to a freehold estate in real property located within the area to be annexed."

Later, in the Burritt case cited above, the court was asked to determine whether a corporation or partnership was considered a "resident" freeholder. The court held that the statute conveyed the right of protest to someone actually residing on the property to be annexed. Corporations held legal residence but not actual residence. Thus corporations and partnerships had no right of protest in first class cities. This decision gave cities the advantage in annexing business districts, as the owners of property in these areas have no right of protest.

3. Annexation of Wholly Surrounded Land. Because the statute providing for annexation of wholly surrounded land is the only one that grants no right of protest, the question of what constitutes wholly surrounded land is an important one for cities. In Calvert v. City of Great Falls, 154 Mont. 213 (1969) the court held that land need not be totally contiguous to be subject to compulsory annexation. Rather, all lands on the sides of the tract to be annexed must be within the city and it must be impossble to reach the incorporated land without crossing the tract proposed for annexation.

While this decision may seem to encourage cities to engage in "shoestring annexations" or to annex strips of property to wholly surround the area, courts in other states have not looked favorably on such practices. It is a cumbersome process at best.

4. Exemptions. Because lands used for industrial or manufacturing purposes represent a considerable revenue source for large cities if they can be annexed, the statutory exclusion from annexation for these lands has been questioned in the courts. In the case of annexation of wholly surrounded lands, a long list of exemptions covering lands used for "agricultural, mining, smelting, refining, transportation or any industrial or manufacturing purpose or for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery or a place for public or private outdoor entertainment or any purpose incident thereto" is provided. The Supreme Court has consistently upheld these exclusions in the Harrison case and in the Calvert case. In the latter, the court stated that a valid and reasonable distinction could be made between types of property because while owners of residential and commercial property received benefits from annexation, for owners of other types of land annexation meant only higher taxes and presented possible zoning problems.

5. Defining exemptions. Because the exclusions described above presented an escape from the controls of annexation, the courts have been asked to rule on who is qualified for such an exemption. In the Brodie case, one person claimed that his land was exempt because it was agricultural. Although horses were grazed on the land, the court held that the agricultural use was incidental to its contemplated residential purpose.

In the Burritt case, the court held that the term "industrial" did not apply to a commercial shopping center and defined the term relatively strictly. In this instance, "industrial use" means a use devoted to manufacturing or processing raw materials into a saleable state.[10]

6. Planned Community Development Act. Since 1974, the major annexation questions decided by the Montana Supreme Court have been embodied in Missoula Rural Fire District vs. the City of Missoula, 168 Mont. 70, 540 P2d 958 (1975). This is the case that essentially made the Planned Community Development Act the only annexation procedure available to cities for four years. Its impact on annexation of any land within a rural fire district was particularly significant. The court held that if a city could annex an area using existing procedures which were not inconsistent with the Act, it could continue to do so; however the city was required to follow the procedures of the Act in all other instances. Thus any annexation of rural fire district land was practically impossible. (As noted in the previous section, the 1979 legislature nullified this decision.)

Current Statutory Annexation Procedures

Under current Montana law, there are eight different and distinct procedures for annexing territory to municipalities. They are briefly outlined and summarized, with emphasis on similarities and differences, as follows:

I. Additions to Municipalities (Title 7, chapter 2, part 42)

A. Type of Land to be Annexed

Any territory adjoining an incorporated city or town that is surveyed and laid off into streets or blocks as an addition to that city or town may be annexed under this statute.

B. Procedures

1. The mayor and a majority of the city council approve the annexation.

2. A map or plat of the addition must be filed with the county clerk.

C. Conditions of Annexation

The council may require the owners of the additions to make streets correspond to those existing in the contiguous areas of the municipality.

II. Contiguous Municipalities (7-2-4302, MCA)

A. Type of Land to be Annexed

When two cities are contiguous (even though separated by a street, ditch, stream, river or small strip of land that cannot be platted), one city may annex itself to the other.

B. Procedures

1. Under this statute, the council of each city must appoint three commissioners to work out the conditions of the annexation and report to the respective cities.

2. A majority of the electors of each town must approve the annexation.

3. The annexation ordinance must be filed with the county clerk.

4. The rights, objections, or liabilities of each of the existing cities are not affected by the annexation.

III. Contiguous land by first class cities (7-2-4301 through 7-2-4314)

A. Type of Land to be Annexed

Any platted or unplatted land for which a certificate of survey has been filed that is contiguous to a first class city may be annexed under these provisions. However, no land used for industrial or manufacturing purposes may be annexed without the owner's written consent.

B. Procedures

1. The city council must pass a resolution stating that the proposed annexation will be to the best interest of those in the city and those to be annexed.

2. Following filing of the resolution, the city clerk must notify <u>all</u> owners of property in

the proposed addition and must have notice of the proposed annexation published in the nearest newspaper at least once a week for two successive weeks.

3. The notice must state that the clerk will receive written expressions of approval or disapproval for a period of 20 days from all freeholders of the property to be annexed.

4. At the next regular meeting following the 20-day period, the council will decide whether to annex the proposed territory; if approval is granted by the council, a resolution effecting the annexation, stating the time it will take effect, will be filed.

C. Protest Provisions

If a majority of the resident freeholders file written protests to the annexation, the city council may not proceed to annex that same parcel (unless by petition).

IV. Contiguous lands by second and third class cities and towns (7-2-4301 through 7-2-4305 and 7-2-4321 through 7-2-4325).

A. Type of Land to be Annexed

The same contiguous platted or unplatted land as for first class cities may be annexed to second and third class cities. Land used for manufacturing or industry may not be annexed without the owner's written consent.

B. Procedures

Same as for first class cities, except that one resolution may be used to annex two or more adjacent tracts as a whole.

C. Protest Provisions

The protest provisions are the same as for first class cities except that a majority of all freeholders affected may stop the annexation.

V. Contiguous Government Land (Title 7, chapter 2, part 44)

A. Type of Land to be Annexed

Any state, federal or locally owned land that is contiguous to a municipality may be annexed under this statute.

B. Procedures

1. The administrative head of the owner of land or holder of a beneficial interest in the land to be annexed must file with the city clerk a statement describing the land and stating that he wants to have the land annexed.

2. The governing body of the municipality must pass a resolution of intent and set a time and place for a public hearing.

3. Notice must be published in the same manner as for the previously described statutes.

4. Written expressions of approval or disapproval may be received from anyone wishing to do so.

5. A hearing on the question must be held.

6. If the governing body finds it in the best interest of the municipality to annex, it must adopt a resolution so stating, to become effective 30 days after passage.

7. 30 days after passage, the resolution and a map showing the new boundaries must be filed with the county clerk.

VI. Wholly Surrounded Land (Title 7, chapter 2, part 45)

A. Type of Land to be Annexed

Any platted or unplatted land that is wholly surrounded by the city may be annexed under this statute, except that the land may be separated by a street, ditch, stream, river, or strip of land too narrow or small to be platted. However, no land may be annexed under this statute when that land is used for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or for the purpose of maintaining or operating a golf course or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor recreation.

B. Procedures

The procedures are the same as those described in III. B. above.

C. Protest Provisions

There are no protest provisions for this type of annexation.

VII. By Petition (Title 7, chapter 2, part 46)

A. Type of Land to be Annexed

Any territory that is not already a part of an incorporated municipality may be annexed to any municipality, regardless of class, under this statute if not less than 33 1/3% of the registered electors of the territory to be annexed petition for such annexation. However, no land used for agriculture, mining, smelting, refining, transportation or any industrial or manufacturing purpose may be annexed under this statute.

B. Procedures

1. When a qualified petition is received, an election must be held in the city and the area to be annexed.

2. If more than 50% of the resident freeholder electors in the territory to be annexed petition to be annexed, the governing body of the municipality may decide the question on its merits without an election.

3. Procedures for the election, if any, are the same as for other city elections.

4. Notice of the election must be published.

5. If a majority of votes are cast in favor of annexation, the governing body shall within 30 days adopt a resolution stating how the area is to be annexed and file it with the city clerk.

6. The documents must then be filed with the county clerk.

VIII. Planned Community Development Act (Title 7, chapter 2, part 47)

A. Purpose

The purpose of this statute is to provide for planned orderly development of cities and a uniform government for urban areas. Cities are to provide quality services as quickly as possible to the newly annexed area.

B. Definitions

1. "Contiguous" is defined as in the other annexation statutes except that the land may also be separated by a railroad or other public service right of way or by government land.

2. "Resident freeholder" is defined as in the other annexation statutes (where it was defined by the court -- see Judicial History section).

C. Initiation of Annexation

Either the governing body or 51% of the resident freeholders may initiate annexation. If initiated by petition, the governing body must act on the petition within 60 days.

D. Procedures

The governing body must:

1. file a resolution of intention to annex, describing the hearing date to be set not less than 30 and not more than 60 days following adoption of the resolution;

2. publish the notice for four successive weeks in a newspaper or in five other public places;

3. hold a hearing on the question of annexation;

4. for 20 days after the hearing receive written protests from resident freeholders in the area proposed to be annexed;

5. stop annexation proceedings for one year if a majority of resident freeholders protest.

Procedures for adoption and filng of the annexation ordinance are spelled out in the statutes. A conflict in the time at which approval may be given is found in these sections. Simultaneous proceedings for several areas may be undertaken. The newly annexed area is subject to municipal taxes levied for the fiscal year following annexation. But property that was part of a sanitary or other special service district may not be taxed for five years following annexation.

E. Plans and Reports on Services

Under this statute, plans for extension of services must be provided at the public hearing on annexation. The details of these plans are spelled out rather specifically in the Act. They include what services are to be provided and how they will be financed.

F. Vote on Proposed Improvements

The people in the area to be annexed may vote on any

proposed capital improvements. If a negative vote is cast by more than 50% of the residents, the area may not be annexed.

G. Land to be Annexed

Land may be annexed under these statutes if:

1. it is contiguous;

2. it is not part of another municipality

3. it is conforming to a duly adopted comprehensive plan;

4. it is not part of a fire district organized for 10 years prior to initiation of annexation, except that a single-ownership parcel may be detracted from the district and then annexed.

H. Other Restrictions

1. Boundaries of the newly annexed area should conform to topographic features. If a street is a boundary, land on both sides should be included.

2. Existing garbage or solid waste services in a newly annexed area must be preserved for a period of five years unless a majority of residents request city service in writing or unless inadequate service is provided.

I. Court Review

The Act provides extensive procedures for judicial review of annexations. Within 30 days following passage of the annexation ordinance, a majority of the resident freeholders or owners of more than 75% in assessed valuation of real property may petition the court for review. The review is limited to whether or not proper procedures were followed in the annexation process and to whether or not the requirements and standards set in 7-2-4734 and 4735 were met.

It is unclear whether the court may also act on a petition stating that the provision of services plan is inadequate. One section does not refer directly to this, while another does. (See 7-2-4741 and 4742.)

Appeal procedures are also provided.

The court must also review a failure by the governing body to annex following proper petition by resident

freeholders. The court may order the area annexed under certain conditions prescribed in the statute -- basically when essential services are not otherwise available and the municipality can provide those services. One-eighth of the aggregate external boundaries of the area to be annexed must also be contiguous to the municipality. These provisions give the court more substantive authority than it has historically taken; otherwise judicial review of annexation is still largely procedural.

Areas of Concern

Through the general literature on the subject of annexation and through a review of the legislative and judicial history of Montana's annexation laws, several areas of concern continually surface. The issues of most debate since the inception of Montana's annexation law are those that for the most part are still problems today. These issues, on which the committee also chose to focus, are:

(1) protest or veto provisions of all but two of the annexation procedures;

(2) exemption or exclusion provisions that prevent the annexation of land used for industrial, manufacturing, and other essentially "urban" uses; and

(3) the distinction between resident and nonresident rights in annexation.

Other more recently expressed problems, which have arisen largely as a result of Supreme Court mandated exclusive use of the Planned Community Development Act, and which the committee also studied, include:

(1) special provisions making it extremely difficult to annex land in rural fire districts;

(2) inadequate and untimely provision of services by cities for newly annexed areas;

(3) lack of coordination in time frames and jurisdiction between the Planned Community Development Act and Montana's subdivision laws; and

(4) continued competition between private and government services (solid waste, garbage, water).

Simply stated, cities see these problems in one light, while surburban and rural residents see them in quite another. In other sections of this report, these and other areas of concern will be analyzed in greater depth. Action taken by the committee

to deal with these issues will be described, and testimony from affected interest groups will further illuminate these problems.

Goals of Montana's Annexation Law

The areas of concern described above must be measured against the goals of Montana's annexation law. Historically, the purpose of Montana's (and any state's) annexation statutes have been simply to provide expanding communities with:

(1) a united and effective single form of government;

(2) orderly growth through uniform regulations such as building codes, planning, and zoning standards; and

(3) an equal sharing of community resources and financial responsibility for those resources by people living in an area united by social, political, and economic interests.

These goals are theoretically essentially the same today. However, many residents of urban fringe and rural areas would argue that the only real reason or goal for cities to annex is to expand their revenue base and provide inefficient services where private interests could give better results. As the study progressed the committee attempted to determine whether these goals are viable today and whether they are being met. As part of that task, the committee compared Montana's annexation statutes to those of other western and midwestern states. The next chapter of this report describes the results of that comparison.

V. ANNEXATION IN SELECTED WESTERN AND MIDWESTERN STATES

In order to compare Montana's annexation procedures to those of other western and midwestern states, which might be experiencing similar problems and perhaps have found a preferable method for solving them, the committee directed that a survey of selected "western" states be undertaken. Those states selected to receive questionnaires included: Minnesota, Wisconsin, Iowa, Nebraska, South Dakota, North Dakota, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, Nevada, California, Alaska, and Hawaii.

From preliminary study on the question of annexation, five questions were asked that would potentially be of use to the committee in its deliberations. Each state was asked to respond to the following questions:

(1) What are your state's procedures for annexing property to municipalities? In Montana, there are eight different statutes that now govern the annexation process.

(2) What are your state's provisions for allowing affected property owners to protest annexation to a municipality? Are those protest provisions viewed as being unduly restrictive to necessary annexation?

(3) Is there a distinction made under your annexation statutes between rights of resident versus nonresident property owners? Historically in Montana that distinction has become more pronounced over the years.

(4) One legislative proposal in Montana that has stimulated some interest is that of streamlining the annexation process for areas of a sufficiently high density to favor annexation. Has your state adopted or considered any similar proposals?

(5) Finally, has your agency developed substantial evidence or studies indicating that unannexed urban fringe areas constitute a major drain on the financial and service resources of nearby municipalities? Are municipal residents subsidizing neighboring areas outside municipal limits or are cities and towns merely eager to annex these areas primarily to gain a larger tax base?

Fifteen of the 21 states surveyed responded in varying degrees of detail to the questionnaire. While the responses and accompanying reports, statutes, etc. make interesting reading, it is difficult to make any broad judgments concerning common trends in annexation procedures throughout the midwestern and western region.

In reviewing the statutes and descriptions of annexation procedures submitted in response to the first question, it

appears that Montana stands somewhat on the more restrictive end of the scale. Montana's eight different statutes are also more complicated than other states' -- the notable exception being California with its 226-page procedures. Several states have different procedures for cities of various sizes. Boundary review commissions of some kind are fairly common in the West.

Few states have protest provisions as favorable to affected property owners as does Montana. And significantly, no other states had exclusions for industrial, manufacturing, smelting, etc. purposes. Agricultural exclusions were more common, however. No other states protected special service districts, such as fire districts, as is done in Montana's statutes. Most states reported that protest provisions favoring property residents were viewed as a hindrance to needed annexation by cities, while in a few states, property owners felt they had little recourse in annexations affecting them.

A majority of the states responding did not distinguish between a resident and nonresident property owner's rights in the annexation process.

Few states, in responding to question 4, reported any proposals considered or adopted to streamline annexation in areas of higher density. Those that had adopted some sort of expedited process for more urbanized areas were Utah, Wyoming, and possibly South Dakota.

Very few states responded affirmatively to question 5 regarding studies documenting whether urban fringe areas constitute a drain on city services. Wyoming's response was most interesting, as few of their cities' services are financed by property taxes but instead are financed by a sales tax. Several states' statutes specifically prohibit the annexation of land solely for the purpose of increasing city revenue.

Summaries of the responses to the survey questions are contained in Appendix B.

VI. IDENTIFICATION OF AREAS OF CONCENTRATION -- DEVELOPMENT OF DISCUSSION PROPOSALS

From the information described in the preceding sections of this report, from a brief review of past legislation dealing with Montana's annexation problems (see Appendix C), and from preliminary testimony taken from interested persons, primarily city officials and rural firefighters, the committee moved quickly at the end of its second meeting in late October, 1979, to identify issues on which to focus the remainder of its study. Two areas of emphasis that the committee chose to eliminate from further consideration should be noted here. The first is alteration, or annexation, of school district boundaries. At the outset of the study, committee members considered including school district annexation questions within the purview of the study. After a brief review of the basic procedures for school district annexation and discussions with Robert Stockton of the Office of Public Instruction, the committee agreed that further study was not warranted in the context of HJR 54. The second area that the committee decided against pursuing was one that the members initially had thought to be a major need for committee action -- the substantial consolidation, rewriting, and simplification of Montana's seemingly complex annexation procedures. After further study, committee members agreed that the Legislative Council's recodification process had greatly improved the comprehensibility of those laws and that while substantive changes were no doubt needed, the basic structure remained essentially sound.

As the next step in its study the committee identified several major problem areas upon which to focus. The committee chose to develop proposals, for discussion purposes only, to provide concrete issues upon which the public could be asked to concentrate, along with other annexation-related problems, at the hearings planned in Billings and Missoula. These proposals for possible legislation to had been discussed in research reports and by the committee in previous meetings and were developed in three stages. The committee agreed to advance the first set of proposals at the January 11 public hearing in Billings. A description of the initial proposals and the rationale behind them follows:

1. Provide uniform rights for resident and nonresident freeholders in annexation proceedings.

Montana's current annexation laws distinguish between the rights of resident and nonresident property owners to protest annexation to first class cities. However, all property owners regardless of residency may protest annexation to second and third class cities and towns. As discussed in the judicial history section of this report, this distinction was challenged in two court actions: Harrison v. City of Missoula, 132 Mont. 591 (1957) and Burritt v. City of Butte, 161 Mont. 530, 508 P.2d 563

(1973). In both cases, the Court affirmed the right of the legislature to make this statutory distinction. In the second case, the Court held that as long as the different treatment was reasonable and not arbitrary and was substantially related to the object of the legislation, it could be considered valid. In the Court's view, because larger cities have different and more complex problems than smaller cities, annexation can rightly be made easier for larger cities by allowing only resident freeholders the right of protest.

The Court made this distinction even more advantageous for first class cities by defining, in a series of cases, the term "resident freeholder" to mean someone actually residing on the property to be annexed. Corporations hold legal residence but not actual residence. Thus corporations and partnerships have no right of protest in first class cities, making annexation of business districts much less obstructed.

Because the committee tentatively felt that the law should be uniform for all classes of cities and towns, and that all property owners should have an equal voice in annexation procedings, it proposed that the distinction be eliminated.

2. Make clear that the exception for mutual waiver of services enacted in Chapter 642 (1979) applies to continued provision of fire protection services by a volunteer fire district in a newly annexed area -- if the muncipality and fire district members agree to the arrangement.

Since enactment of the Planned Community Development Act in 1974, rural fire districts have held considerable influence in annexation decisions affecting areas protected by RFD's. And in 1975, when the Montana Supreme Court held that the Planned Community Development Act superseded all other methods of annexation, this influence was further strengthened. The Planned Community Development Act provides that land may be annexed if, along with other criteria, it is not part of a fire district organized for 10 years prior to initiation of annexation, except that a single-ownership parcel may be detracted from the district and then annexed.

The 1979 Legislature, apparently convinced that the Planned Community Development Act should not be the only method of annexation available to municipalities, enacted Chapter 642, sponsored by Representative Gerald Kessler. This legislation provides that each method of annexation is separate and distinct and also contains a provision allowing the municipality and the area to be annexed to mutually agree to waive provision of certain services where private interests can better provide that service.

The 1979 Legislature intended to allow municipalities and residents of an area to be annexed to negotiate the provision of various services. Thus when all parties decide, for example, that a

rural fire district would continue to best serve a newly annexed area, then the statute sanctions continued service by the RFD. However, if city service is more desirable, then the city must provide that service as detailed in the Planned Community Development Act.

Following the enactment of Chapter 642 during the 1979 session, the Code Comissioner inserted this language following each of the eight different annexation procedures:

> Provisions of services. In all cases of annexation under current Montana law, services will be provided as specified in Title 7, chapter 2, part 47, except where mutually agreed upon by the municipality and the freeholders of the area to be annexed.

The committee tentatively wanted to emphasize and clarify that this provision applies specifically to fire protection services as well as to other public services such as water, sewage, and solid waste.

3. Retain protest provisions in all instances except for:

   (a) areas of noncontiguous city-owned land, including industrial parks and utilities;

   (b) all areas totally surrounded by property within the city except bona fide agricultural land -- a prohibition against "strip annexation" would accompany this change;

   (c) contiguous high density land, whether within or without a fire district with a voluntary continued service agreement; and

   (d) contiguous manufacturing land.

In research reports presented to the committee and in initial testimony from interested persons, the committee learned that in many respects Montana's annexation laws give unusually strong rights of protest to various classes of property owners when compared with those of other states. The committee felt that these strong protest provisions were in many cases warranted, but advanced preliminary proposals for limiting rights of protest in the following instances:

   (a) contiguous or noncontiguous city-owned land including industrial parks and city-owned utilities such as water and sewage treatment plants, and city parks or recreation areas;

Often city-owned facilities are not within the city limits because they are not contiguous to city land and thus cannot be annexed.

(Current law requires that land must be contiguous in order to be eligible for annexation.) The committee proposed to delete the requirement of contiguity in this case and also proposed to establish that if the city runs a water or sewer line out to service the municipal property, it is not required to provide that service to areas not in the city limits which those lines must pass through.

(b) all areas totally surrounded by incorporated areas except bona fide agricultural land -- a prohibition against "strip annexation" would accompany this change;

The committee tentatively intended to eliminate all but one of the exceptions to the waiver of protest requirements in the procedure for annexation of "wholly surrounded lands". The city could not annex wholly surrounded land that was truly agricultural in character, and it specifically could not use "strip annexation" to surround an area to eliminate protest rights of affected freeholders.

Under current Montana law, protest rights may not be exercised when land to be annexed is wholly surrounded by land incorporated within a first class city. However, land may not be annexed under these conditions whenever the land is used:

(1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose; or

(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto. (7-2-4503, MCA)

Thus the committee's proposed action would eliminate all but the agricultural exception. It would also specifically prohibit and define "strip annexation" which could be used by cities to meet the requirements of this process, which is more conducive to expeditious annexation.

(c) contiguous high density land, whether within or without a fire district and with a voluntary continued service agreement where a fire district was involved;

The committee, after hearing testimony in favor of a density triggered formula similar to that embodied in HB 245 (1979), sponsored by Rep. James Azzara, gave preliminary support to a proposal that would facilitate annexation in areas of high density land contiguous to the city limits. The committee had not yet defined what was meant by "high density" but did so in later meetings. Rights of protest would be waived in

such contiguous high density areas when the area is not included in a rural fire district or when the area is included in a fire district and a mutual agreement on fire protection has been reached by the city and the affected freeholders. (See discussion proposal #2.)

(d) contiguous industrial and manufacturing land;

Committee members agreed informally to advance the proposal that protest rights be waived not only for annexation of wholly surrounded industrial and manufacturing land but also for contiguous land in that category. Under current law, owners of land used for industrial or manufacturing purposes must give written consent to annexation. The committee's tentative proposal would delete that requirement. Through a survey of other midwestern and western states, committee members learned that Montana is one of the only states that restricts annexation of industrial and manufacturing land in such a manner.

4. Reconcile annexation and subdivision laws so that unnecessary duplication is eliminated when an area is subdivided and annexed simultaneously.

The committee was concerned that when a city annexes an area that has previously been serviced by private water, sewage, and solid waste service providers, it must adequately compensate the private providers for their equipment and property. Committee members were undecided on how this can best be accomplished and anticipated hearing further testimony on this situation in Billings and Missoula.

After receiving public comment on this first set of proposals and other annexation issues (see minutes of January 11, 1980 meeting, Appendix D) the committee refined them and formulated additional discussion proposals at the March 1, 1980 meeting in Helena.[11]

Additional discussion proposals

1A. Clarify the language of HB 366 (chapter 642, 1979), requiring provision of services as specified in Title 7, Chapter 2, Part 47, by referring instead to a specific section of the Planned Community Development Act - 7-2-4732, MCA.

At its March 1 meeting, the committee reviewed a staff report detailing confusion that had arisen among state and city officials concerning the extent to which the requirements of the Planned Community Development Act must be met in providing services to newly annexed areas under the various annexation procedures. (See staff report for additional detail.) After discussion of the original intent of HB 366, the committee tentatively agreed to change the original language of HB 366 to provide that cities must adopt a plan for providing services to the newly annexed area. The plan would have to contain all the elements of 7-2-4732, MCA, as described on the following page.

7-2-4732. Contents of plan for extension of services. (1) Specifically, the plans for the extension of services shall provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of 5 years into the future, showing on a yearly basis how the municipality plans to extend services, develop and add sections to the city.

(2) The plans shall:

(a) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation;

(b) provide for future extension of streets and of major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when such streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions;

(c) if extension of streets and water, sewer, or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such streets and utility lines.

(3) A method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. If the area is serviced currently by adequate water and sewage services, streets, curbs, and gutters and no capital improvements are needed to provide adequate services stipulated by this section and 7-2-4731, the municipality must provide the area to be annexed with a plan of how they plan to finance other services to be included within the district—mainly, police protection, fire protection, garbage collection, street, and street maintenance services, as well as continued utility service.

(4) In this annexation plan, it must be clearly stated that the entire municipality tends to share the tax burden for these services, and if so, the area may be annexed without a bond issue under the provisions of this part.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part).

2A. Grant municipalities the flexibility to choose which method of annexation will be employed when the circumstances of the annexation apply to more than one procedure.

Again as a result of review of the staff memorandum on HB 366, the committee tentatively agreed to recommend language clarifying the authority of municipalities to select the method of annexation to be followed when the specific situation fits more than one procedure. For example, Title 7, chapter 2, part 43 (Annexation of Contiguous Land), part 45 (Annexation of Wholly Surrounded Land), and part 46 (Annexation by Petition) may seemingly be interchanged, if the circumstances warrant it, with part 47 (the Planned

Community Development Act). Rather than add additional restrictions or directions as to which method would supersede, the committee tentatively recommended granting municipalities the flexibilitiy to use the method that is in their judgment most suitable.

3A. Establish a procedure by which areas that have been thought to be part of a city for a number of years and are later discovered to have been improperly or inadequately added to the city may be officially annexed and recorded.

At its March 1 meeting, the committee learned of a recent Montana Supreme Court decision, Gregory v. City of Forsyth, et al. (37 St. Rep. 277), concerning a situation in which a parcel of land had been listed for many years in city plats and maps as part of the city. However, the property owners later discovered that their land had never actually been annexed, and the court ruled that the plaintiffs' suit for refund of city taxes paid over the years would have to be reconsidered in light of this fact, and that the statute of limitations did not begin until plaintiffs discovered that the city was in error.

The committee heard testimony that there were many such instances either of improper recordkeeping or inadequately executed annexations throughout the state. In order to provide a mechanism for cities to officially annex these parcels, the committee gave preliminary approval to a proposal to consider those parcels on which city taxes have been paid without protest for a period of years (e.g., 5, 10, etc.) to be officially part of the city and recorded as such.

4A. Prohibit the use of strip annexation to surround or provide contiguity to an area a city desires to annex.

Although part of the original discussion proposals, the committee advanced the following alternatives to define this prohibition;

(i) a city may not annex a highway or street right-of way unless abutting property on one or both sides is already within the city or is annexed to the city in the same proceeding;

(ii) a city may only annex those areas that can be reasonably assumed to be used for orderly development of the city; the city may not annex these areas if they will be connected to the city only by a strip of land less than 25 feet wide or by a public highway or street.

Both Kansas and Idaho have similar prohibitions. Although the "spirit" of Montana's present annexation laws would allow strip annexation, the committee tentatively wished to specify this prohibition in statute.

The committee took the two sets of discussion proposals described above to the public for comment in Missoula on April 26, 1980. Over forty people testified at the hearing, and debate on all sides of the annexation issues discussed was heated. As evidenced from the testimony received at the Missoula hearing (see Appendix E), Montana's annexation laws and the problems they have created for the city of Missoula and residents of urban Missoula County are substantial.

After that hearing several specific new proposals for statutory change suggested by participants were abstracted for the committee. These did not include suggestions of a philosophical nature such as "protect landowners' rights" or "make urban fringe residents pay their way," etc., but consist of specific suggestions not previously addressed by the committee.

1 A. Eliminate the discrepancy between resident and nonresident freeholders' and electors' rights to petition for annexation.

This discrepancy makes it more difficult for the city to annex because nonresidents renting property have the right to protest annexation by the city. If this discrepancy is eliminated in 7-2-4301, MCA, the resident freeholder requirement in 7-2-4601 should also be eliminated because it is causing the city a lot of difficulty. That section of the law allows annexation by petition of the property owner and it is basically unworkable because it requires that annexation be either on request of 50% of the resident freeholders or one-third of the resident electors.

B. Use the word "land rather than "territory" in order to provide consistency in the language of the statutes, specifically in part 46.

C. Limit the right of protest in a very dense urban area that is contiguous.

There could be descending amounts of density that would trigger a protest provision.

2. Develop a system of urban service districts with rates to be determined by the distance from city services.

3. Develop a plan that would be fair to the city and to the area to be annexed: whichever entity instigates annexation proceedings would put out an impact statement on both the city taxpayer and the area being annexed; then a vote would be taken to determine if the city taxpayer wishes to accept or reject the area or to determine if the area residents still wish to be annexed.

4 A. Determine how disagreement between the city and people to be annexed will be resolved when the city and the people in an area to be annexed must agree on the type of services that would be

best for the area, such as city or rural fire protection.

B. Insure that newly annexed areas have immediate and proper representation in city government.

C. Prohibit the levying of city taxes on newly annexed areas until the city actually begins to provide services that have been agreed upon.

5. Consider the creation of a boundary commission. A statutorily authorized boundary commission could deal essentially with local problems and there could be a separate boundary commission for each county so that each area could deal with its annexation problems within the unique framework of the historical growth patterns of the area.

If a boundary commission should become a reality it could make some decisions about where the city boundaries ought to be [and it may be appropriate that the Missoula Rural Fire District have an important voice on the commission.]

Protest provisions should be dealt with by a boundary commission; it is not appropriate, even though it may be politically popular, and politically unavoidable in some people's minds, to give every property owner the right of protest. This creates a chaotic situation that leads to avoidance of an issue.

People get involved in a rumor mill and often get misinformation and sign protest petitions based on that misinformation. A boundary commission would provide a representative for those people in a governmental setting and there woould be an opportunity for dialogue to air the issues.

The next section of this report outlines the committee's response to the public comments received during its deliberations and the development of recommended legislation to be submitted to the 1981 Legislature.

VII. DEVELOPMENT OF DRAFT LEGISLATION

With the three sets of discussion proposals and considerable public comment before them, the committee members gathered in Helena on July 11, 1980 to begin formulating draft legislation for eventual recommendation to the 1981 Legislature. Nearly all the discussion proposals were incorporated in some way into draft legislation, which was considered at the committee's final meeting on September 23, 1980. The major elements of the bills drafted for the committee's review are described in the following paragraphs. The eight bills included in this description embody much of the material in the discussion proposals and essentially follow numerically the order of the discussion proposals adopted at the July 10 meeting.

LC 0115 - Eliminating the distinction between rights of resident and nonresident freeholders. This bill, incorporating the provisions of the first discussion proposal, gives all freeholders the same rights, regardless of residency, in annexation proceedings. It also has the effect of eliminating the distinction between procedures for first class cities versus second and third class cities and towns, with one exception. The committee's intent on the question of whether all municipalilties should have the authority to annex wholly surrounded lands under part 45, rather than only first class cities as is currently the case under 7-2-4501, MCA, was resolved at the September meeting. The committee decided to give all municipalities this authority.

The repealer in section 16 is necessary because sections 7-2-4321 through 4323, MCA, provide for annexation procedures of contiguous lands by second and third class cities and towns that are identical to those by first class cities, except for nonresident freeholder rights.

LC 0116 - Relating to provision of services by municipalities to newly annexed areas. Developed in accordance with the second January 11th discussion proposal and proposal 1A, and as a modification of proposal 5, this bill provides that services will be provided according to a plan provided by the municipality as specified in 7-2-4732, MCA.

As originally drafted, exceptions to this provision were required under 7-2-4736 for garbage, solid waste, and fire protection services and as otherwise mutually agreed upon by the municipality and freeholders of the area to be annexed. The committee needed to decide which of the two options, if any, for adding fire protection services to section 7-2-4736 on pages 3 and 4 of the original draft was most suitable. Comments from those in attendance at the September 25 meeting helped resolve this question. After lengthy and thorough discussion of the disputed need for compensating rural firefighters for lost pension rights, in cases of annexation, the provisions of the bill granting this protection

from competition by municipal fire departments were dropped. (See minutes of September 25 for a detailed account of this discussion.)

LC 0117 - Deleting certain restrictions on annexation of wholly surrounded land and prohibiting strip annexation. This bill incorporates the provisions of proposals 3(b) and 4A. Under current law, in sections 7-2-4301, 7-2-4401, and 7-2-4504, contiguous lands are defined as including land that is separated from the municipality by a street or other roadway. This bill adds the qualification that the land may be separated laterally by a street and still be contiguous, but specifically prohibits the annexation of areas that will be connected to the city or town only by a strip of land less than 20 feet wide or by a strip of land containing only land within the right-of-way of a public street considered longitudinally.

The bill also eliminates the exemptions, except for bona fide agricultural land, from the provisions allowing annexation without protest of unincorporated "islands" within a city.

LC 0118 - Providing for annexating of high-density land under certain conditions. Adapted from Rep. Azzara's bill, HB 245 (1979), this bill reflects discussion proposal 3(c). The bill includes a new section (all new language) that would be codified in part 43. The original draft provided that when contiguous land has a density of not less than four dwelling units per acre it may be annexed if the municipal governing body meets the requirements outlined in subsections (1) through (4), including notice, hearings, economic impact statements, provision of services, and provision of equitable representation for residents of newly annexed areas. The committee discussed this bill at length September 25 and could not agree on language for the density-triggering formula in the first section. The committee directed the staff to develop this language further and submit it to the committee [for approval] by mail. When the final draft was completed, committee members deadlocked on approval of the bill in its entirety. Because of a 4-4 tie vote, the bill is not recommended to the 1981 Legislature as a committee bill.

LC 0119 - Deleting restrictions on annexation of land used for industrial, manufacturing, and other purposes. This bill would enact discussion proposal 3(d). Section 1 eliminates the restrictions on annexation by petition for all contiguous lands except agricultural lands. The section (7-2-4303) that is repealed is as follows:

> **7-2-4303. Restrictions on annexation power.** Land used for industrial or manufacturing purposes shall not be included in such city under the provisions of 7-2-4311 through 7-2-4314 and 7-2-4321 through 7-2-4325 without the consent in writing of the owners of such land.
>
> History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

If this bill is enacted along with LC 0015 giving nonresident freeholders the right of protest in certain circumstances, freeholders of industrial and manufacturing land would have a right of protest equal to that of other freeholders in the area proposed to be annexed. Freeholders of industrial and manufacturing land would not have an absolute veto power, however, as under present law.

LC 0120 - Providing for joint hearings and coordination of requirements for annexation and subdivision approval, whenever possible. This bill simply amends the "Montana Subdivision and Platting Act" to provide that subdivision review and annexation will occur with minimal duplication of hearings, reports, and other requirements, as embodied in discussion proposal 4.

LC 0121 - Allowing municipalities to select the annexation procedure appropriate to each annexation situation. If enacted, this bill would implement discussion proposal 2A. The new language clarifying municipal discretion in determining which annexation procedures are suitable to a particular situation is added to the applicability section in each of parts 42 through 47. Once the municipality chooses a particular set of procedures, it must follow those specific procedures prescribed in the appropriate part.

LC 0122 - Prescribing conditions under which land is presumed to be annexed and may be so recorded. This bill incorporates the provisions of discussion proposal 3A which arose after the Supreme Court issued its opinion in Gregory v. City of Forsyth, et al. and Balock v. Town of Melstone, et al. The new language stating when land is conclusively presumed to be annexed would be codified as a separate section in each of parts 42 through 47.

VIII. OTHER FINAL COMMITTEE DELIBERATIONS

In conjunction with discussions on preservation of existing public services within newly annexed areas, particularly as it related to LC 0116, described above, the committee at its final meeting heard extensive presentations on volunteer firefighter pensions and other benefits as they might be affected by potential annexations. Representatives of rural fire districts had traditionally resisted annexation of land within those districts because of alleged loss of "vested rights" in pension funds and other benefits if annexation occurred and land was withdrawn from the district. These representatives of volunteer firefighters participated extensively in early meetings of the study committee and it was the committee's desire to provide legislation to meet their legitimate concerns while providing a workable means by which land within rural fire districts could be annexed. Thus the committee requested administrators of the various pension and disability funds applicable to volunteer firefighters to present information on these funds and the potential impact of annexation on them.

At the September 25 meeting, Representatives of the Public Employees Retirement Division, the State Auditor, and the Division of Workers' Compensation presented information essentially refuting many of the volunteer firefighters earlier claims of severe consequences because of potential annexation. Representatives of volunteer firefighters were noticeably absent from the committee's final meeting, and committee members decided against providing statutory protection for rural fire districts other than that provided in the final draft of LC 0116. [As stated earlier LC 0116 reinforces the 1979 statute allowing municipalities and residents of newly annexed areas to negotiate questions of how and by whom services will be provided.] (For a detailed account of these deliberations, see the minutes of the September 25, 1980 meeting.)

IX. ADOPTION OF FINAL RECOMMENDATIONS -- CONCLUSIONS

As its package of bills to be recommended to the 1981 Legislature, the study committee approved all the bills described above, except LC 0118, providing for annexation of high-density land under certain conditions. (These bills appear as Appendices G through M of this report.) In approving this legislation, the committee hopes to have met at least partially the directives of HJR 54. The issues surrounding municipal annexation are and will remain controversial by their very nature in affecting private property and essential public services. The 1981 Legislature will determine whether the package of legislation developed by the Study Committee on Annexation achieves the goal of facilitating an effective and equitable response to urban growth while protecting the fundamental rights of citizens of those growing communities.

X. FOOTNOTES

1. National League of Cities, Adjusting Municipal Boundaries (2) (1966).

2. League of Kansas Municipalities, Annexation: A Manual for City Officials in Kansas, (Rev. ed. 1978).

3. Constitution of the State of Montana, Article V, section 12, (1972).

4. Thomas J. Michie, Jr. and Marcia S. Mashaw, Annexation and State Aid to Localities: A Compromise is Reached, University of Virginia Newsletter, vol. 55, No. 11. (July 1979).

5. National League of Cities, op. cit. and Nevada Legislative Counsel Bureau, Office of Research Background Paper, 1977, No. 4.

6. South Dakota Local Government Study Commission, Eleventh Annual Report, (1979).

7. Halliman, "Invisible Boundaries and Political Responsibility: A Proposal for Revision of California Annexation Laws," Pacific Law Journal, volume 3, (1972).

8. South Dakota Local Government Study Commission, op. cit.

9. Burke, Martin, "Annexation in Montana", Montana Law Review, vol. 35, (1974).

10. Ibid.

11. Also at the March 1, 1980 meeting, the committee considered the problems of provision of municipal services to areas outside corporate boundaries. After considering the staff report contained in Appendix F, the committee decided against delving further into what the members believed was a matter for continued determination by the Public Service Commission.

XI. APPENDICES

APPENDIX A CHART OF MAJOR LAWS GOVERNING ANNEXATION

	Petition for Annextion 7-2-4601 et seq.	Planned Community Develop. 7-2-4701 et. seq.	Additions 7-2-4201 et. seq.	Platted or surveyed land, 1st class cities 7-2-4311-4314	Platted or surveyed land 2nd & 3d class cities 7-2-4321-4325	Surrounded Land 7-2-4561 et seq.
1. Land Classifications Generally Included	Any contiguous, unincorp. area.	Any contiguous, unincorp. area included in and conforming to comprehensive plan	Any contiguous, unincorp, area surveyed with street or blocks laid off & labeled an "Addition"	Any contiguous, unincorp. area which has been platted or has a certificate of survey.	same as first class cities	Any contiguous, unincorp. area that is wholly surrounded by city.
2. Land Classification Specifially Precluded	No land used for agri., mining, smelting, refining, trans. or any indust. or manufacturing purpose.	No part within a fire district organized at least 10 years prior.	None	Land used for industrial or manufacturing purposes can be included only with owner's written consent.	same as first class cities	No land used for agri., mining, smelting, refining, trans., industry mfg., golf, sports field, airport, cemetery, drive-in theater.
3. Action Initiated By	33 1/3 of the resident free holders petitions for annexation.	Either governing body or 51% of the Registered Freeholders petition.	Owner files a map or plat as an addition.	Governing Body	same as first class cities	Governing Body
4. Resolution of Intention	Notification of election once a week for 3 weeks	Required	Not required	Required	same as first class cities	Required
5. Indentification of Benefit	Not Required	Published report on 5-year plan for services & method of financing	Not required	Resolution expresses judgment that annexation is in best interest of all concerned	same as first class cities	Resolution expresses judgment that annexation is in best interest of all concerned.

	Petition for Annexation 7-2-4601 et seq.	Planned Community Develop. 7-2-4701 et. seq.	Additions 7-2-4201 et. seq.	Platted or surveyed land, 1st class cities 7-2-4311-4314	Platted or surveyed land 2nd & 3d class cities 7-2-4321-4325	Surrounded Land 7-2-4561 et seq.
6. Public Hearing	Not required	From 30 to 60 days following resolution of intention	Not required	Not required	same as first class cities	Not required
7. Expression of approval or disapproval	Majority of electors in combined municipality & proposed area must approve. Election not necessary upon petition of more than 50%.	If a majority of resident Freeholders disapprove in writing within 20 days, annextion ended.	None	If a majority of resident Freeholders disapprove in writing within 20 days, annexation ended.	If majority of freeholders protest in writing w/in 20 days, annexation ended.	None
8. Annexation Resolution or Ordinance	Within 30 days of election governing body will pass a resolution	From 7 to 60 days following hearing governing body will adopt an ordinance	None	After 20 days from date of resolution of intention a final resolution	same as 1st class cities	After 20 days from date of resolution of intention a final resolution.
9. Other Implementing action	None	If plan calls for capital improvements, then resident Freeholders may kill annexation by majority vote against C.I.	Governing Body Approval of plat & its endorsement thereon.	None	None	None

CHART OF MAJOR LAWS GOVERNING ANNEXATION *

One municipality to another 7-2-4302	Publicly owned land 7-2-4401-4407
1. Contiguous muncipalities	Contiguous local, state, or federal land
2. None	None
3. Either city council	Government official in charge of land to be annexed.
4. Ordinance declaring intention required	Required
5. Not required	Governing body must find it to be in best interest of municipality and its inhabitants
6. Not required	Required
7. Majority of elector's of both municipalities must approve	None - except in public hearing
8. Filed with clerk of county in which cities situated	Within 30 days of approval, resolution must be filed w/county
9. Adopt ordinance implementing action - rights and obligations of either city not impaired	None

* Adapted from annexation study prepared for city of Helena by Urban Management Consultants of San Franciso, Inc. (1976)

APPENDIX B

RESPONSES TO SURVEY OF SELECTED WESTERN AND MIDWESTERN STATES

Question 1. What are your state's procedures for annexing property to municipalities?

Utah

Utah provides a local boundary commission to decide contested questions of annexation. The stated policy is to "... include all of the urbanized unincorporated areas contiguous to municipalities" under the umbrella of annexation. Utah's annexation statutes were substantially revised in 1979 to provide a response to many similar problems to Montana's.

Texas

All medium and large sized cities in Texas have adopted home rule charters which, according to their population, allows them to control within limits development within their extra-territorial jurisdiction (ETJ.) This ETJ protects a city from infringement by other cities or growth of new ones. Under the Municipal Annexation Act (V.T.C.S. 970 a.), home rule cities may annex, with area and time limitations, contiguous territories. They are not subject to veto power of residents. Texas annexation statutes definitely favor cities.

South Dakota

South Dakota cities may expand their boundaries through two methods. The first allows three-fourths of the voters and three-fourths of the land owners to submit a petition to the governing body. The second allows the governing body to initiate annexation of contiguous areas by resolution. These resolutions are subject to an election upon petition by 50% of the voters in the combined area. The resolutions must contain a description of the land to be annexed and a notice of a hearing. If the area contains unplatted land, the county commissioners must also act on the resolution.

Wisconsin

(Section 66.021)--A petition may be filed by a majority of the electors in the territory to be annexed and either the owners of at least 1/2 of the land in area or 1/2 of the real property in assessed value. In the alternative, a petition for referendum on the question of annexation may be filed by 20% of the electors in the territory and either the owners of at least 1/2 of the land in area or 1/2 of the real property in assessed value.

If a majority of the electors sign a petition for annexation, a referendum is held only when a petition for referendum is signed by at least 20% of the electors residing in the territory.

In counties of over 50,000 in population, the State Department of Local Affairs and Development must review the proposed annexation and make a determination of whether it is in the public interest. This determination is only advisory.

The governing body of the annexing city or village must adopt an ordinance annexing the territory by a 2/3 vote of its elected membership.

(Section 66.021(12)--If a petition for annexation is signed by all of the electors residing in the territory to be annexed, the governing body of the annexing city or village may approve the annexation by a 2/3 vote of its elected membership.

(Section 66.024)--Upon adoption of a resolution to annex incorporated territory by a 2/3 vote of its elected membership,

the governing body of a city or village may apply to the circuit court to order than an annexation referendum be held. If a majority of the electors or owners of more than 1/2 of the real property in assessed value in the territory file a petition protesting annexation, the court must deny the application. Otherwise, a referendum election is held, and the territory is annexed upon approval of a majority of the votes cast in the election.

Other statutes provide for annexation under special conditions.

Nebraska

Nebraska's annexation statutes are related to the size or class of its cities. Separate procedures exist for:

a) Metropolitan class cities (300,000+ population) may at any time annex land, except agricultural land, almost without restriction. They may annex any adjoining city of the first class having less than 10,000 people or any adjoining second class city or village.

b) Primary class cities (100,000 - 300,000 population) may by ordinance annex any contiguous or adjacent land or any village that it provides with water and/or sewer service. An election must be held if two cities of this class consolidate.

c) First class cities (5,000 - 100,000 population) may by ordinance annex any adjacent or contiguous land that is urban or suburban in character. The city must provide within one year all usual city services to newly annexed areas. First class cities may also annex second class cities and villages under certain conditions.

d) Second class cities and villages (800 - 5,000) and (100 - 800) may annex contiguous subdivided territory upon petition by a majority of owners and inhabitants. They may also annex urban and suburban land by ordinance.

Nevada

Annexation procedures in Nevada are far from clear and smooth functioning. There are three annexation laws in Nevada. They are based on the population of the county in which the city is located. As a practical matter, this means that one law is for Clark County in which Las Vegas is located, another law is for Washoe County in which Reno is located, and the third law if for all the other municipalities. Actually, there are only two separate procedures. The difference between Washoe County and the rest of the counties of the state, exluding Clark County, is that there is a city annexation commission required in Washoe County.

The two procedures are as follows:

1) For cities in counties of less than 200,000 population, an annexation may be initiated by a city and approved by a local government annexation commission. The statutes require a majority of the property owners or owners of a majority of the value of property in an area to stop the annexation.

2) For all cities in Clark County, the law requires that the territory to be annexed meet specific criteria for population, use, and contiguity. A service plan is also required and services must be provided by a certain date. Initiation is by petition or by the county commissioners. The area can be annexed by ordinance barring a petition of protest by a majority of property owners to be annexed.

Iowa

Annexation may be accomplished in Iowa by petition of all the owners of land in a territory adjoining a city. Territory comprising railroad right of way may be included without the consent of the railroad. The governing body then may approve the annexation.

Other forms of annexation may be initiated by a city council, a county board of supervisors, a regional planning authority, or five percent of the qualified electors of a territory. A statutorily created state agency called the City Development Board then decides whether the area should be annexed (or incorporated or discontinued). Certain factors must be considered by the Board. Local residents appointed as advisors (committee) to the board on each issue help decide the issue. A public hearing must be held and the Board may only approve the annexation if the area to be annexed is adjoining the city and if the city can provide services for the area. The annexation may not be accomplished solely to increase revenue. An election on the question is then held in the city and in the area to be annexed. A majority vote approves the annexation. Appeal is to the district court.

Missouri

Missouri has several different provisions for annexation according to location of the city or town. Areas around St. Louis and Kansas City are given special treatment. Generally, before any city can annex, it must file suit and get a favorable declaratory judgment that it can provide services, etc. Then the residents of the city vote, and upon a favorable vote, annexation is complete. The residents of the area to be annexed do not get to vote (except in the two metro areas), but their recourse is to protest vigorously in the declaratory judgment action.

Hawaii

Hawaii, being an insular state, has all land masses assigned to one of four counties, with the City and County of Honolulu

being the catch-all county of jurisdiction in the event some land mass fell in the crack and was not assigned to either Hawaii, Kauai, or Maui. There are no annexations per se in Hawaii.

Arizona

Annexation may be accomplished by petition of the owners of not less than 1/2 in value of the real and personal property subject to taxation by the city or town in the event of annexation. After certain procedural requirements are met, the annexation may be approved by ordinance of the governing body.

California

Annexations and all other forms of government organization must be approved by a local agency formation commission (LAFCO). Each county in California except San Francisco has such a commission. Detailed procedures for the operation of such commissions and for annexations are provided.

Wyoming

Annexation is initiated by petition of a majority of the landowners in the area proposed to be annexed. The governing body of the city or town must make certain findings concerning the territory before it can be annexed that indicate the area is suitable for annexation. Annexation may also be initiated by the governing body. A public hearing must be held.

Idaho

When land contiguous or adjacent to a city or town has been laid off into blocks containing not more than 5 acres of land each, when tracts of land not exceeding 5 acres are sold, or when the owner requests annexation, the city council may adopt an annexation ordinance as it does other city ordinances. Shoe-string annexation is prohibited, and the land must be used for orderly development of the city.

Washington

There are basically three methods by which cities and towns annex unincorporated territory which is located contiguous to the city's or town's existing boundaries:

1) The direct petition method where the owners of property equal to at least 75 percent of the value of all the property proposed to be annexed petition the city for annexation (RCW 35-.13.130, 35A.14.120);

2) The petition/election method where qualified voters resident in an area that is proposed to be annexed equal in number

to 20 percent (10 percent if the annexation is to a code city) of the votes cast at the last election petition a city for annexation and subsequently a majority of the voters resident in the area proposed to be annexed vote in favor of a proposition to annex RCW 35.13.020 and 35A.14.020); and

(3) The resolution/election method where a city or town legislative body passes a resolution placing a proposition before the resident voters of an area to determine if the area should be annexed and subsequently by majority vote the residents approve the proposition (RCW 35.13.015 and 35A.14.015).

Any one of these three methods may be used for a city or town to annex land located adjacent to the city or town. In each instance the city or town must give its approval before an annexation can occur.

It appears that the vast majority of municipal annexations in Washington have used the direct petition method during the last decade. Under the direct petition method of annexation resident voters who do not own property in the area to be annexed have no direct method to participate in the annexation. Under the petition/election and resolution/election methods of annexation, property owners who do not reside in the area proposed to be annexed have no direct method to participate in the annexation.

Additional approval of annexations is necessary in counties which possess boundary review boards. Kitsap County, among others, has a boundary review board. A boundary review board may review proposed annexations and approves, rejects, or modifies and approves an annexation. RCW 36.93.150. The decisions of boundary review boards attempt to achieve a number of objectives, including the preservation of natural neighborhoods, the use of physical boundaries, the creation of natural service areas, and the prevention of abnormal or irregular boundaries. RCW 36.93.180. In addition, boundary review boards consider a number of factors, including population and territory, population density, land uses, natural boundaries, the need for municipal services, and the existence of agricultural lands and agricultural activities. RCW 36.93.170.

Kansas

The city home rule amendment contained in Article 5, Section 12 of the Kansas Constitution provides, in part, that the Legislature shall provide by general law, applicable to all cities, for the methods by which city boundary lines may be altered. The Kansas Legislature in 1974 revised its general annexation law contained in K.S.A. 12-519 et seq., and repealed several special annexation provisions which did not apply uniformly to all cities. The respondent sent a copy of "Annexation: A Manual for City Officials in Kansas" published by the League of Kansas Muncipalities in 1978.

The manual contains a copy of the annexation statutes and detailed discussion thereof, as well as discussion of pertinent Kansas Supreme Court decisions and Attorney General opinions.

The annexation law contains detailed provisions regarding notice to property owners and city residents, public hearing procedures, and the development of a plan by the city for the extension of services to areas proposed to be annexed.

The statutes authorize cities to annex by three different methods:

1) unilaterally by cities, if six criteria for the land are met;

2) approval by the board of county commissioners; and

3) land owner petition or consent.

Question 2. What are your state's provisions for allowing affected property owners to protest annexation to a municipality? Are those protest provisions viewed as being unduly restrictive to necessary annexation?

Utah

Any "affected entity" may protest to the boundary commission a proposed municipal annexation. "Affected entities" include a county, municipality, or other entity possessing taxation powers within a county, whose territory, service delivery, or revenue will be directly affected by the proposed annexation.

The person responding from Utah said that these provisions were viewed as restrictive by those protesting and satisfactory by those who are not.

Texas

There appear to be no protest provisions under Texas law.

South Dakota

There are no specific protest provisions. Five percent of the voters residing in the combined area of the city and the area to be annexed may force a referendum on the question.

Wisconsin

As is evident from the provisions described in question 1, Wisconsin statutes, in most instances, provide affected property owners with the opportunity to require a referendum election on a proposed annexation. Electors residing in the territory can reject a proposed annexation in a referendum election. [Owners not residing in the territory are not able to vote in annexation

elections but can, in most instances, petition to have an election held.]

Nebraska

Affected property owners appear to have very little to say about annexations in all classes of cities.

Nevada

A majority of property owners in the area to be annexed may protest and stop annexation. The person responding to the question indicated there seemed to be no serious concern on this count.

Iowa

No protest procedures are provided. An election is held on all but 100% petition questions of annexations, however.

Missouri

People in the area to be annexed may protest before the court in the action for declaratory judgment (see question 1.) They may not vote on questions of annexation except in the areas surrounding St. Louis and Kansas City.

Hawaii

Not applicable.

Arizona

Protests may be filed only if procedural requirements are not met.

California

California annexation procedures cover 226 pages of statutes. (I couldn't find protest provisions -- no index was provided.)

Wyoming

A landowner or landowners owning 60% or more of the area to be annexed, where the area is occupied by not more than 5 family units, may file written objections and no further action may be taken on the question. However, if 50% or more of the perimeter of the area to be annexed is adjacent and contiguous to the corporate limits of the annexing city or town, the above restrictions do not apply.

Idaho

No protest provisions exist different from those of other city ordinances. A bill in the 1979 Idaho legislature was recently

defeated that would have granted more public input into the process. The majority viewed it as being too restrictive toward necessary annexation.

Washington

Disgruntled residents of an area proposed to be annexed may force a review of the annexation by the boundary review board upon the filing of a petition requesting the review which is signed by five percent of the resident registered voters. RCW 36.93.100(3)(a). Similarly disgruntled property owners may force a review by filing a petition requesting a review which is signed by the owner or owners of the property consisting of at least five percent of the affected valuation. RCW 36.93.100(3)(b). Either of these petitions must be filed within 60 days of a filing of notice of intention to proceed with an annexation.

Kansas

Kansas law contains a provision that gives any owner of land annexed the right to appeal to the district court the city's authority for such action and the regularity of the proceedings.

Question 3. Is there a distinction made under your annexation statutes between rights of a resident versus nonresident property owner?

Utah

No distinction is made. Individual property owners have no protest rights similar to Montana's. A public hearing is held on all annexations, however.

Texas

No distinction is made. No protest rights are granted; public hearings are required.

South Dakota

Only voters residing in affected areas may force an election on the question of municipally initiated annexations. All property owners may petition for annexation as may "legal voters" (apparently not just property owners).

Wisconsin

There are no explicit distinctions made in the statutes on annexation between rights of resident and noresident property owners. However, differences drawn between electors and property owners in the right to vote in an annexation referendum election and in the ability to file a petition requesting a referendum do impact differently on resident and nonresident property owners.

Nebraska

No distinction is made.

Nevada

No distinction is made.

Iowa

No distinction is made.

Missouri

Residents, not property owners, vote in questions of municipal annexations. Where property owners are given special voting privileges, they must also be residents.

Hawaii

Not applicable.

Arizona

No distinction is made.

California

See question 2.

Wyoming

No distinction is made.

Idaho

No distinction is made.

Washington

A distinction similar to Montana's is made, essentially providing property owners who do not reside in an area to be annexed with no direct method to participate in the annexation.

Kansas

There is no distinction made.

Question 4. Has your state adopted or considered any proposals to streamline the annexation process for areas of sufficiently high density to favor annexation?

Utah

Although the respondent replied that there had been no such proposals considered, Utah does have in its recently adopted statutes special procedures favoring annexation for areas of "urban development." This term is defined as a "housing subdivision involving more than 15 residential units with an average of less than 1 acre per unit or a commercial or industrial development for which cost projections exceed $750,000 for any or all phases."

Texas

Texas annexation statutes favor cities to such an extent that no such studies have been made.

South Dakota

The South Dakota Local Government Study Commissin issued recommendations to streamline the annexation process in 1979. (The implementation was not indicated by the respondent.)

Wisconsin

There are no provisions in Wisconsin law which make it easier to annex territory in areas of high population density. No such proposals have been introduced in the 1977 or 1979 Legislative Session.

There are two bills pending in the current (1979) session which would modify Wisconsin's annexation laws. Assembly Bill 254 would require that a petition for annexation under s. 66.021(2), Wis. Stats., include a plan for developing the involved territory. The plan would have to be adopted by the city or village two years prior to the effective date of the annexation. Any portion of the territory could be excluded from the annexation if the development plan were not followed. Assembly Bill 255 would require that an annexation under s. 66.021 include at least a quarter-quarter section (40 acres) or the full remainder of a quarter-quarter section previously annexed. Both bills are now before the Assembly Committee on Local Affairs. Copies of the bill are on file. A public hearing was held on them, but no further action has been taken.

Two bills were introduced in the 1977 Legislative Session that would have created state and county boundary review boards (1977 Assembly Bill 1036 and 1977 Senate Bill 630). These boards would have been granted authority to block annexations. Neither of the bills were reported out of committee. A summary of 1977 Assembly Bill 1036 is on file.

Nebraska

The procedures couldn't be more streamlined than they already are.

Nevada

Although Nevada treats areas of higher density differently, annexation is more streamlined in lower density areas.

Iowa

No response.

Missouri

Response unclear.

Hawaii

Not applicable.

Arizona

No proposals have been made.

California

No response was submitted, although some proposals have undoubtedly been made.

Wyoming

Yes -- see question 2. Protest provisions don't apply in certain areas.

Idaho

No proposals have been made.

Washington

No proposals have been made. Boundary review boards in some counties serve this purpose.

Kansas

There are no such proposals.

Question 5. Has your agency developed substantial evidence or studies indicating that unannexed urban fringe areas constitute a major drain on the financial and service resources of nearby

areas outside municipal limits or are cities and towns merely eager to annex those areas primarily to gain a larger tax base?

Utah

Utah has issued a study on "double taxation" in 1977 and the State Supreme Court has held the practice to be unconstitutional. "Double taxation" is defined as occurring when residents of a local government must pay two overlappoing governments for a service but get the service from only one. In Utah, city residents felt they were being assessed by both the city and county for certain services and were actually subsidizing other county residents.

Texas

Because of its statutes favoring fairly rapid annexation, residents of Texas cities, particularly those residents living in older, low income, minority core centers, have charged that rapid expansion has caused cities to channel most of their resources to newer outer-edge areas. Thus they feel central city residents are being neglected and favor restrictions on new annexations. Two recent studies discuss this trend.

South Dakota

See Report of S.D. Local Government Study Commission described in question 4.

Wisconsin

No studies are available.

Nebraska

No response to this question.

Nevada

In addition to cities and counties, Nevada has a unique and hybrid form of local government. It is called the unincorporated town. The name appears to be an inherent contradiction. In fact, unincorporated towns are somewhat analogous to special service districts in other states. Their historical origins make them something more than that but in modern usage that is their role. Clark County, Nevada, the largest county, has made extensive use of the unincorporated town form of government. It has used unincorporated towns to provide municipal services to areas outside the four incorporated bities of Clark County. As a matter of fact, the world famour Las Vegas Strip is not in the City of Las Vegas. It is in the unincorporated towns of Winchester and Paradise. These unincorporated towns are administered by the Clark County board of commissioners. The tax levels in those

unincorporated towns are the same as the tax levels in the incorporated cities. The level of services provided is also roughly equivalent.

In recent years, there have been several attempts to do away with the unincorporated towns of Clark County and enlarge the City of Las Vegas. The attempts have been unsuccessful. Clark County is the only part of the state where a great deal of concern about annexation has been evidenced. The annexation law for the rest of the state seems to work reasonably well. The situation in Clark County is quite unusual and the failure of Las Vegas to annex adjacent territory has more to do with the creation of the unincorporated towns than it does with any serious opposition of the residents to annexation. Because the area residents are well served by Clark County through the unincorporated towns, neither is there any particular advantage seen in being annexed to Las Vegas.

Iowa

No response to this question.

Missouri

No response.

Hawaii

No applicable.

Arizona

No studies available.

California

No response.

Wyoming

Wyoming has hardly any property tax and most city services are financed by a sales tax paid to businesses within the municipality. Thus people living outside the city limits pay a substantial share of the cost of city services.

Idaho

No studies were reported.

Washington

No studies were reported.

Kansas

One recent two-volume study by the Urban Planning Department of the University of Kansas has dealt with this subject.

APPENDIX C

ANNEXATION BILLS INTRODUCED IN PAST LEGISLATIVE SESSIONS

Bill No.	Sponsor	Problem Addressed	Solution	Disposition
1979 (Cont.)				
HB 382	Menahan	Municipalities are presenting unfair competition to private fire protection companies in newly annexed areas.	Provide for the contracting by a municipality with a private fire protection company for service within a newly annexed area.	Died in Conference Committee
HB 388	Kemmis	Restrictions on annexation of mining, smelting, refining, transportation, industrial, and manufacturing areas places an unfair burden on cities providing services to those areas.	Remove this restriction.	Killed
HB 423	Donaldson	Same as HB 381	Similar to HB 381.	Killed
HB 565	Kessler	Annexation procedures are generally too complex and should be facilitated.	Same as HB 122 (1977).	Killed
HB 245	Azzara	Some areas definitely urban in character are not being annexed because of restrictive annexation procedures.	Provide for expedited annexation procedures when land is of a certain urban density, and protect citizens' right to continue receiving rural fire protection.	Killed
SB 11	Jergeson	Same as HB 565.	Same as HB 122 (1977).	Killed
SB 336	Story	Annexation laws need minor clean-up and clarification.	Recodification bill.	Enacted, Chapter 250, L. of 1979.
HJR 54	Gould	No one can agree on how annexation can be accomplished to the benefit of all concerned.	Study Montana's annexation laws and revise them to provide a unified approach to annexation.	Signed and study underway.

(Revised page 4)

ANNEXATION BILLS INTRODUCED IN PAST LEGISLATIVE SESSIONS

Bill No.	Sponsor	Problem Addressed	Solution Proposed	Disposition
1977 (Cont.)				
HB 323	Harrington	Municipalities are providing unnecessary competition to private providers of garbage and solid waste services in newly annexed areas.	Prohibit municipalities from offering competitive garbage and solid waste services in newly annexed areas for a period of 3 years unless private provider provides unsatisfactory service.	Enacted, Chapter 131, L. of 1977.
1979				
HB 274	Kessler	Municipalities are providing water and sewer services to areas that refuse to be annexed, placing an unfair burden on city residents; various loopholes in existing statutes allow this problem to continue.	Provide that a city or town may require that such areas be annexed; spell out what constitutes water and sewer service; close loopholes allowing receiving of services without annexation.	Killed
HB 365	Kessler	Procedures for annexation by petition are cumbersome and apply only to cities having a population of more than 20,000.	Provide that an election is not necessary when more than 50% of the resident freeholders of the area to be annexed petition for annexation; extend annexation by petition to all cities.	Enacted, Chapter 641, L. of 1979
HB 366	Kessler	Court decision has held that Planned Community Development Act supersedes all other forms of annexation where there is a conflict; this is sometimes a cumbersome process as in some cases areas to be annexed may not need all the services required by the Act.	Reverse that decision and provide that each method of annexation is separate and distinct. Provide that municipality and area to be annexed may mutually agree to waive provision of certain services.	Enacted with Governor's Amendments, Ch. 642, L. of 1979.
HB 381	Kessler	Competition for private garbage and solid waste service providers is still unnecessarily strong.	Extend prohibition in HB 323 (1977) to 5 years and provide that city may provide service only upon written petition by a majority of residents.	Enacted, Chapter 434, L. of 1979.

ANNEXATION BILLS INTRODUCED IN PAST LEGISLATIVE SESSIONS

Bill No.	Sponsor	Problem Addressed	Solution Proposed	Disposition
1975				
HB 268	Fagg	Provisions of the Planned Community Development Act restricting annexation of land within fire districts are cumbersome and preventing necessary annexation; the Act should not supersede other annexation procedures.	Delete exception to Act for land within fire districts; provide that the Planned Community Development Act is to be used as an alternative means of annexation.	Killed in Senate
1977				
HB 122	Gerke	Annexation laws are cumbersome, restrictive, and incomprehensible. Areas that should be annexed are not due to this process.	Provide a simplified and unified annexation law that facilitates annexation.	Killed in Senate
Sb 232	Murray	Only resident freeholders are allowed to participate in annexation decisions and this restriction unfairly discriminates against nonresidents; notice for annexation procedures is inadequate; a court decision essentially disenfranchised commercial businesses from protest rights.	Give nonresident freeholders the same rights as resident freeholders; provide written notice to every affected freeholder; include commercial and other organizations in definition of "person."	Killed
SB 199	Murray	Same as above, as procedures relate to first class cities.	Same as above as procedures relate to first class cities.	Enacted, Chapter 510, L. of 1977.
SB 116	Flynn	Exception in Planned Community Development Act for land within fire districts is too restrictive and prevents necessary annexation.	Provide an alternative procedure for annexing a single parcel of land and detracting that parcel from a fire district.	Enacted, Chapter 81, L. of 1977.

ANNEXATION BILLS INTRODUCED IN PAST LEGISLATIVE SESSIONS

Bill No.	Sponsor	Problem Addressed	Solution Proposed	Disposition
1973-74				
HB 389	Hageman	Nonresident freeholders are being unreasonably denied the right to protest annexation in first class cities.	Allow all freeholders the right to protest; repeal all conflicting statutes.	Killed in House Local Government
HB 405	Schye	Cities and towns are unable to annex agricultural, mining, smelting, refining, transportation, industrial, manufacturing, recreational lands, which use city services but don't pay taxes for them; also, only resident freeholders should be able to protest in 2nd and 3rd class cities.	Repeal the prohibition on annexing such lands; delete the exception for annexing such lands when they are wholly surrounded by a city; provide that only resident freeholders may protest annexation in 2nd and 3rd class cities.	Killed in House - Second Reading
HB 556	Fagg	Existing annexation laws are discriminatory and cause areas to be annexed without adequate provision for services; some cities are annexing only to gain a greater tax base; many areas adjacent to cities are deriving benefits from the city while not paying their fair share of the cost of those services.	The Planned Community Development Act, which provides a separate system of annexation with a requirement for a services plan.	Enacted, Chapter 361, L. 1974. (Title 7, Chapter 2, part 47, MCA)
HB 753	Tierney	Areas outside of cities but that are receiving water or sewer service from the city are protesting annexation and therefore using city services without adequately paying for them.	Provide that any person or other entity receiving city water and sewer services waives the right to protest annexation; define what is meant by "receiving services."	Killed on Second Reading

APPENDIX D

HOUSE MEMBERS
OSCAR KVAALEN
Chairman
REX MANUEL
ROBERT L. MARKS
JOHN VINCENT

SENATE MEMBERS
PAT M. GOODOVER
VICE CHAIRMAN
CHET BLAYLOCK
CARROLL GRAHAM
FRANK HAZELBAKER

Montana Legislative Council
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Helena, 59601
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DIANA S. DOWLING
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CODE COMMISSIONER
ELEANOR ECK
ADMINISTRATIVE ASSISTANT
ROBERTA MOODY
DIRECTOR, LEGISLATIVE SERVICES
ROBERT PERSON
DIRECTOR, RESEARCH
SHEROLE CONNELLY
DIRECTOR, ACCOUNTING DIVISION
ROBERT C. PYFER
DIRECTOR, LEGAL SERVICES

Minutes

STUDY COMMITTEE ON ANNEXATION

Third Meeting
Eastern Montana College

January 11, 1980
Billings, Montana

Call to Order and Roll Call

The meeting was called to order at 9:00 a.m. by Chairman George McCallum. Other members present were Representatives Jay Fabrega, Burt Hurwitz, and Gerald Kessler. Also present were Deborah Schmidt, staff researcher, Helen MacPherson, secretary, and visitors as listed on the attached visitor's sheet.

Chairman McCallum noted that due to lack of a quorum the Committee would be unable to take any official action at today's meeting.

Presentation by Staff on Study Proposals

Deborah Schmidt presented a report on suggested discussion proposals for possible legislation to correct some of the problems which had been discussed in research reports and by the Committee in previous meetings. (Copy on file.)

Public Testimony on Discussion Proposals and Other Annexation Issues

Burlington Northern Railroad

Albert Bell stated that Burlington Northern objects to removing transportation, industrial, and manufacturing parcels of land from the list of exclusions to annexation without protest. (Copy of written testimony attached.)

Rep. Kessler asked Mr. Bell what justification there is for not annexing transportation property. Mr. Bell replied that it would protect the property from being put into another taxing district. He said the railroads are over-assessed already.

Senator McCallum asked Mr. Bell whether railroad property in Helena is taxed under city or county ordinances and Mr. Bell replied that, to his knowledge, it is taxed by the city. Mr. Bell said he would provide the Committee with definite information on this matter.

Rep. Hurwitz said he would assume that Helena officials would respond to Mr. Bell's statement because at the last Committee meeting Helena officials' testimony indicated they hold an opinion contrary to that expressed by Mr. Bell today.

Wayne Britt, Roundup City Council, said Roundup is annexing one mile in every direction but south of the area surrounding the town and that the officials need to know more about proper procedures and ramifications of annexation.

Jane Lloyd, member of the Billings City Council, Chairman of the Council's Planning, Zoning, and Community Development Committee, and member of the City-County Planning Board, commended the Committee for providing specific study proposals. She said this is a unique approach for a Committee and that it should prove very useful in facilitating an exchange of ideas on what is needed to improve and clarify the annexation statutes. (A copy of Ms. Lloyd's written testimony is attached.)

Ken Peterson, Billings City Attorney, testified before the Committee. (Copy of written testimony is attached.)

In answer to a question from Senator McCallum regarding subdivision laws as they apply to allowing for plats as an addition to the city, Mr. Peterson responded that Billings does allow plats to be filed as an addition to the city but does not require the person filing that plat to go through any other annexation procedure. He said the city does require subdivision agreements to be executed in some detail.

Thomas Llewellyn, Billings Chamber of Commerce, read into the record an Annexation Policy Statement adopted by the Billings area Chamber of Commerce. (Copy of statement attached.)

Larry Herman, Mayor of Laurel, testified before the Committee and made the following points, stating that his remarks would also reflect the views of the Mayor of Columbus, who could not attend the meeting but who wished to make his views known.

1. The annexation statutes that create the distinction between classes of cities cause real problems for cities and the laws should be uniform, regardless of class of city.

2. Small cities have a real problem in that they are surrounded by counties, who draw on city services.

3. Zoning regulations should remain the same for all classes of cities.

4. Regarding strip annexation, a distinction must be made between voluntary and involuntary annexation.

5. Disagreed with study proposal regarding establishment of a review commission. City-county planning board should provide sufficient review

6. The City of Laurel subscribes to the concept of addition by plat and requests an annexation report to ensure that the city can handle the addition.

7. One acre tracts are creating a lot of problems for Laurel, especially in the matter of providing fire protection.

8. Publicly owned property outside of Laurel, particularly the airport, is costly for Laurel to maintain and yet the city receives no revenue from the airport. Cities should be able to annex publicly owned land; however, that land should not be used for purposes of annexation of other areas.

9. Roadways that are partly within the city and partly within the county cause a problem when it comes to maintenance and improvement. There should be some provision, perhaps on joint petition of the county and city, to establish a uniform district for maintenance and improvement of the roadway.

Curtis McKenzie, Laurel City Engineer, remarked that the provision in the statutes for purchase of and compensation for equipment owned by a provider of service in an area to be annexed is a problem. He suggested that the statute contain a statement that equipment that is of a transitory or mobile nature would be excluded since the original owner could use this equipment in another capacity.

Larry Herman pointed out that there seems to be a discrepancy in the wording of the statute regarding purchase of equipment.

Ray Blehm, Montana State Firemen's Association, reiterated his organization's position in support of reasonable and equitable annexation laws. He also made the following observations:

1. Cities have been shown to be one of the more efficient providers of services for an urban environment.

2. At the previous Committee meeting there was some discussion regarding an artificial barrier such as Indian reservation property blocking annexation of a small community. When a city has grown beyond the Indian reservation property that city property should be considered to be contiguous because nothing can be done to solve the problem other than to declare the property to be contiguous.

Dan Mizner, Montana League of Cities and Towns, said this situation exists in Poplar, Wolf Point, and Nashua. He said people on the other side of the city want city services but the Indians will not annex any of the property or give right of way through Indian land. He said that under present law that property cannot be considered to be contiguous.

Al Thelen, City Manager of Billings and former City Manager of Helena, directed the Committee's attention to the following areas of concern:

1. Regarding the City of Polson extending water service, recent news coverage indicates both the cities of Kalispell and Helena have been taker before the Public Service Commission requesting an order that they extend

their water and sewer services outside the city limits. This is extremely important to annexation laws. There has been some orderly development in a number of cities, in spite of archaic and confusing annexation laws, principally because the cities have controlled the development through utility extension. The Committee should follow the development of these cases because the outcome will have a very definite effect on annexation.

2. There are a number of laws similar to the ones that exempt from taxation by cities property such as airports, and laws relating to extension of services such as garbage collection. Some of these present statutes are disincentives to orderly development and they should be studied by the Committee.

Rep. Hurwitz asked Mr. Thelen about his remarks at the previous Committee meeting regarding annexation of railroad property. Mr. Thelen said this is not a matter of taxation, but that in Helena a large parcel of railroad land, almost like an island, has prevented the orderly development of that city and the railroad has refused to master plan the area with the city. He said for this reason the City of Helen has taken the position that the exemption for transportation land shoul be eliminated.

Albert Bell of Burlington Northern took exception to Mr. Thelen's remarks and said his company is now in the process of masterplanning the property mentioned. He said the masterplan will be presented to the City of Helena upon its completion and that it will be in line with the Subdivision and Platting Act.

Rep. Gene Frates appeared on behalf of people residing outside of the city (Billings Heights). He made the following observations:

1. The committee seems to be constituted one-sidedly in favor of annexation.

2. People do not want to be annexed into a city just to provide additional taxes for the city. They do not want to be annexed based on the fact that they are in an adjacent area unless the city will render full services.

3. Legislation presented last year was all to prevent the cities from rendering full services.

Chairman McCallum assured Rep. Frates that it is his hope that the Committee is fair and impartial in its deliberations, even though individual members may hold differing views on annexation.

Rep. Kessler said he is weary of hearing the charges that cities annex just to get more taxes. He said cities may be fighting to get an equal share of what services they must provide, but that another issue is orderly growth. He said in most cases cities do not make money from annexation.

Chairman McCallum remarked that he had hoped there would be more representation at today's meeting of property owners affected by annexation.

Royal Johnson, representing the Billings City Council, responded that the lack of orderly annexation affects all of the public and that therefore those in attendance today do represent those affected.

The Committee recessed for lunch at 11:15, having completed hearing testimony from all in attendance at the morning session who wished to make a presentation. The meeting was reconvened at 1:30 to hear any additional interested persons, but since none appeared, the afternoon session was devoted to informal Committee discussion regarding the problems of annexation.

Rep. Fabrega made the suggestion that residents of an area contiguous to an area to be annexed should have the right of protest. He said this may help to solve the stalemate that exists at present.

A tentative meeting schedule was decided upon. The next meeting will be held on March 1 in Helena and a public hearing will be held in Missoula in a few weeks. The committee will begin discussing proposed legislation in late April or early May.

Written testimony was received from James L. Hohn of Atlas Engineers, Inc. (Copy of testimony attached.)

The meeting adjourned at approximately 2:45 p.m.

Study Committee on Annexation

Visitors' List

1/11/80

NAME	REPRESENTING
Albert G Bell	Burlington Northern Inc
Robert Dozier	State Legislature
WAYNE BRITT	Roundup City Council
Dave Gross	Billings Area Chamber of Commerce
Ken Peterson	City of Billings
[illegible]	[illegible]
Don Mignery	League of Cities and Towns
Janice Lubke	Montana Chamber Assn
Dave Hough	Billings City Council
Larry Herman	Laurel
Curtis McKenzie	Laurel
Walt Rising	Billings City Council
Douglas C. Cox	Billings C/C Planning
Loyal Johnson	Billings City Council
Ray Bleikamp	Blgs
Dale Hamburg	Blgs
Ray E Bleikamp	1st St Federal Assn
Dennis Thompson	City of Blgs Engineer
L-John MacMartin	Comm Assoc., Laurel
Al T Nelson	city adm,
John B. Fine	City Co Planning Board
Ken Haag	Blgs
W.L. BRASHEAR	EXXON Co, USA
[illegible]	[illegible]

Visitors' List

NAME	REPRESENTING
Kathleen Merryman	Billings Gazette
Sen Fowlkes	HD 60
Joni K. Gould	KULR 8-TV
Glen Holman	Mayor - Miles City

BURLINGTON NORTHERN

INDUSTRIAL DEVELOPMENT AND
PROPERTY MANAGEMENT DEPARTMENT

Room 702
First Northwestern Bank B[illegible]
Billings, Montana 59101
Telephone (406) 259-4521

Ms. Deborah Schmidt
Montana Legislative Council
State Capital
Helena, Montana 59601

January 9, 1980

Dear Ms. Schmidt:

Thank you for your Dec. 19, 1979 letter giving us the opportunity to make comments on annexation study as follows:

Item 1. This should be changed to include property owners. "Provide that all property owners, regardless ....."

Item 3a Industrial Parks and utilities should be restricted from annexation unless approved by the landowner.

Item 3d Contiguous industrial manufacturing and transportation parcels of land should be restricted from annexation unless approved by the landowner.

Proposals appear to discriminate against the minority landowner and non-resident landowner, and prevents a landowner from exercising statutory procedures to keep his property outside municipal entities.

Montana statutes provide taxation incentives to industrial land to stimulate economic development and employment. Business creates wealth, and business creates jobs, not government. Everything possible should be done to show business it is welcome instead of structuring adverse legislation.

Transportation property needs protection to prevent annexation by municipal entities that want to acquire an additional property taxation base and annexation to enlarge the municipal boundaries by flag pole annexation or strip annexation.

Existing statutes protect transportation and industrial property

from being annexed without landowner approval and should be retained.

Thank you.

Sincerely,

Albert G. Bell

Albert G. Bell, Manager
Industrial Development &
Property Management

File: 600

My name is Jane Lloyd. I am a member of the Billings City Council and I am here as the Chairman of the Council Planning and Zoning Committee (I am also a member of the City-County Planning Board). On behalf of the City of Billings, I commend the Committee for giving the public specific proposals for discussion so that we might benefit from each other's thinking on the annexation question. This is a unique and productive procedure for a meeting of this nature.

Our Council Committee met and discussed the five proposals that you put forward and I would like to respond to them.

1. It is our position that the law not be changed. We think that all property owners in an area to be annexed be notified and heard at a public hearing according to due process, but that only the property owners living in the area be entitled to legal protest. There are many instances where corporate absentee owners would be able to obstruct an annexation action and interfere with reasonable growth and development of a municipality.

2. Support -- we did have a question of the City's liability in an area that was supposed to be protected by a volunteer (also private?) fire department.

3. (a) Agree.

(b) Agree. We further suggest that the size of the area be defined as "larger than five acres".

(c) Agree -- has the Committee defined "high density" in this context. We ask this question because in our metropolitan areas, it would be too restrictive. As you know, the subdivision laws limit dwelling units to one per acre with a well and septic tank or one per half acre with well or septic tank. Since most growth on our urban fringes does not receive sewer service and city water is also limited, the above restrictions apply.

(d) Agree -- though the City doesn't always annex even when we are legally entitled -- as an example, the Great Western Sugar Factory has signed waivers, but has asked not to be annexed for reasons of economic hardship. To date, the City has honored that request.

4. The City of Billings has been using the provision in the law that allows an area to be platted as an addition to the City. The accompanying subdivision improvements agreement has provided the "contract" and clarifies the conditions under which this action is taken. We suggest that annexation by contract could further clarify the law in this area.

5. It is the position of the City that if a special service district exists in an area that is annexed, that both the assets and liabilities of the district be transferred to the City. Private service delivery should be considered separately. It is important that a distinction be made between a service district and private service.

We would also like to point out to the Committee that in a growing municipality the people who live in the expanding area are going to require services. If the municipality is not allowed to provide those services, it will be necessary to create special service districts. The multiplicity of such districts creates an administrative nightmare as the urban areas develop. The end result is confusing, inefficent and costly. It is important that a growing community be allowed to manage and direct it's growth to the extent possible. It is our high hope that this Committee will assist Billings and it's people in the development of a fine community. Thank you very much.

CITY OF BILLINGS
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BILLINGS MONTANA 59103
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Office of the
CITY ATTORNEY

30 January, 1980

Ms. Debra Schmidt
Montana State Legislative
Committee on Annexation
Montana Legislative Council
Research Division
Room 138
State Capitol
Helena, MT 59601

Re: Testimony in Support of
Change of Annexation Laws

Dear Ms. Schmidt:

Enclosed is a Memorandum of my testimony as requested when I testified on 11 January, 1980, here in Billings, Montana.

Thank you.

Very truly yours,

PETERSON LAW OFFICES
City Attorneys

K. D. Peterson

KDPpt

Enclosure

RECEIVED
FEB 1 1980
MONTANA LEGISLATIVE
COUNCIL

MEMORANDUM OF TESTIMONY

GIVEN BEFORE MONTANA STATE LEGISLATIVE

COMMITTEE ON ANNEXATION

ON 11 JANUARY, 1980,

AT EASTERN MONTANA COLLEGE,

BILLINGS, MONTANA

On the above date, K. D. PETERSON, City Attorney for the City of Billings, testified before the Legislative Annexation Committee, and gave testimony which followed the following lines:

1. Because of K. D. Peterson's experience in dealing with attorneys and legal issues for the thirteen (13) years that he has been in practice of law, it is readily apparent from reviewing the various annexation laws in the State of Montana that there is a great need to reduce the complexity and the conflicting provisions and exemptions.

2. The Committee's first consideration should be to combine all annexation laws, ameliorate the differences and the complexity, and simplify the whole process to every extent possible. There should be various methods for annexing property to cities. Because of the various characteristics, some annexations should be relatively simple with a minimum of procedure, and others may require greater obligations and duties on the part of the annexing entity.

3. One of the problems that a city has involves wholly surrounded islands within the city that have not been annexed. These islands receive a higher degree of benefit because they are wholly surrounded than do contiguous parcels of property. Wholly surrounded properties receive indirect benefit from police protection, fire protection, and from use of the city streets. In addition, the residents of the city are required to pay a greater amount of taxes to provide utilities and services passed those wholly surrounded areas.

Wholly surrounded areas should be one of the simpliest and easiest annexations available to cities. There should be nothing more required than a resolution of intent, notice to the owner or owners, a public hearing, and

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a resolution annexing the property. There should not be any provision for a legally sufficient protest to bar the annexation. The same procedure should apply to high density contiguous properties. Those persons who live in the high density contiguous areas live there because the city is there. For the most part, they work in the city, partake of the police and fire protection while they are in the city, use all of the city streets, and partake of the amenities of the city just because the city is there. This includes use of city parks and shopping centers that cater to the public.

4. Municipal property should be able to be annexed merely by a resolution annexing the area, whether the property is contiguous or not.

5. It may be in the best interest of the cities and all parties involved to place certain requirements on annexing low density or vacant land; but again, the procedure would not be extremely complex. In those areas, a resolution of intent should be required, and notice should be given to the owner or owners. The city should develop a plan and a program to extend services to the area proposed to be annexed. After the plan for services is developed, there should be a public hearing on that plan. The city should be able to include in that plan not only the city's responsibility to extend services and fund those extensions but also the use of special improvement districts to provide for extension of services to the area.

Following the public hearing, there should be a sufficient period of time to allow written protests, and there should be a percentage, something over fifty percent (50%) which would constitute a legally sufficient protest to bar the annexation. If there is not sufficient protest, then the annexation should be accomplished by a resolution approving the plan for extension of services and annexing the area.

None of the procedure should require an ordinance to effect the annexation. An ordinance takes a minimum of forty-two (42) days to take effect, and is normally used to pass laws which will be continuing in nature.

6. The state laws should clearly allow and recognize annexation by agreement; that is, the city and any person or persons desiring to annex an area of land should be able to enter into an agreement on whatever conditions

that the city wishes to impose or exact and on which the persons desiring to be annexed are willing to agree to. The parties ought to be able to annex by agreement, whether or not the property is contiguous to the city. There should, however, be some limitation imposed; and it is my opinion that any property touching the four and one-half (4 1/2) mile limit ought to be able to be annexed by an agreement.

7. Because of the need of the city to control the expansion of services, the provision in the state law to the effect that the city may require annexation or waivers of the right to protest annexation, before it extends services, should be and must be retained. In the event that that provision was not retained, this public service commission or perhaps a future public service commission could require the cities to extend services and utilities without limit and without any ability in the city to have those who participate in receiving city services pay their fair share of those costs.

MEMORANDUM OF TESTIMONY DATED_____ January, 1980.

BY:_____
K. D. Peterson

Billings Area
CHAMBER OF COMMERCE

ANNEXATION POLICY STATEMENT

BILLINGS AREA CHAMBER OF COMMERCE

The Billings Area Chamber of Commerce is concerned about the growth and development of Billings and the impact the existing state annexation laws have on this growth and development. It is the position of the Chamber that there are too many laws dealing with annexation resulting in too many options and variables, and too many loopholes that make it difficult, if not impossible, to fulfill some basic beliefs the Chamber has. These being:

- That land resources should be used efficiently and economically based on sound planning and fair regulations that are responsive to the growth of this area;

- That compact and well-developed urban units under the jurisdiction of one governmental entity are preferred to urban sprawl and jurisdictional overlap and confusion;

- That a municipality is an appropriate unit of local government to provide the governmental services essential for orderly urban development and for the protection of health, safety, and welfare in areas being used intensively for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development.

With these beliefs in mind, the Chamber has the following goals it wishes to have attained in the revision of Montana's annexation laws.

- Consolidation of the laws to reduce the actual number of laws and make the various annexation procedures and requirements as uniform as possible.

- Re-evaluation of provisions which allow for the formation and/or continued existence of county islands within the boundaries of the city. While recognizing that rare and unusual circumstances may sometimes exist which warrant the existence of such islands, that in most cases such islands are not in the best interest of the total community and are counterproductive to good land and growth practices as set forth by the Chamber's land use and growth policy.

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- -Establish reasonable criteria for annexation so that annexation is based on the interests of both those to be annexed and the total community.

To achieve these goals, the Chamber makes the following recommendations with regards to annexation procedures.

For the annexation of undeveloped land the following methods are urged.

- -Annexation by filing the plat of a subdivision as an addition to the city as is now allowed by state statute.

- -Annexation by contract between the property owner(s) and the City. Such an annexation contract would spell out the degree and type of service to be provided by the City and when these services would be provided.

For the annexation of already developed land the following method is urged. The procedure should be the same whether the City or the property owner(s) initiate the annexation.

- -That a special annexation review commission be established to examine all proposed annexations under this procedure to determine if they meet with the established criteria for annexation.

    - -This commission should consist of seven members. Five should be appointed by the City under some plan that would spread the representation as fairly as possible throughout the city. Two members should be appointed by the County Commissioners and who should live outside the city limits but within the jurisdictional area established for City-County planning boards.

- -That all annexation proposals be reviewed by this special annexation review commission to determine if the proposal meets the below recommended criteria.

    - -The area to be annexed is contiguous to the City. Contiguous should mean at least 10 percent of the perimeter of the area to be annexed is contiguous to the City or that property the width of one platted lot is contiguous to the City. The annexation of public right-of-way, without annexing the abutting property, to reach a piece of land for annexation purposes should not make that land contiguous, and therefore it may not be annexed unless requested by the owner(s).

-The City is able to offer services to the area to be annexed, which are equivalent to the services available in the area contiguous to the area being annexed.

-That the land is not being used for agricultural purposes which should be defined as;

-An area of land that is not less than five contiguous acres and it has been actively devoted to agriculture during the last growing season and it continues to be actively devoted to agricultural use which means:

-it is used to produce field crops including but not limited to grains, feed crops, fruits, vegetables; or

-it is used for grazing; or

-it is in a crop land retirement program.

-it agriculturally produces for sale or home consumption the equivalent of 15 percent or more of the owner's annual gross income regardless of the number of contiguous acres in the ownership.

-land should not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

-the grazing on the land by a horse or other animal kept as a hobby and not as a part of a bona fide agricultural enterprise operated for a profit should not be considered as agriculture for the purpose of this annexation procedure.

-That the annexation is in the best interests of both those to be annexed as well as the best interests of the total community and that the annexation will result in a more harmonious urban unit, and that the area to be annexed fits in with the overall make-up and character of the City.

-This special annexation review commission should not have autonomous authority but should be advisory to the governing body of the City. But

on the other hand, measures should be taken to ensure that this commission is not ignored by establishing such requirements that all annexation proposals under this procedure must go to the commission before they can be considered by the governing body of the City.

-This commission, after reviewing the proposed annexation, should make a recommendation in writing to the governing body of the City as to whether the proposed annexation meets the requirements for annexation, and if not, what criteria have not been met and why.

-The governing body of the City would make the final decision but only after giving each side of the annexation question another opportunity to present their case, either in writing, or through a spokesman.

-Should the governing body of the City decide contrary to the recommendations of the commission, the governing body should make public, in writing, all of its reasons for reversing the recommendation of the commission.

-The final decision of the governing body of the City should be subject to judicial review. Either party of the annexation question should be able to ask for such judicial review.

Approved by the Board of Directors January 9, 1980

Signature of the President

ck

MEMO

TO Deborah Schmidt
Montana Legislative Council

FROM Jim Hahn

TIME

DATE 12/26/79

RE Annexation Interim Committee

When subdividing and annexation are simultaneous - there should be an accounting for Zoning as well. A zone change compatible with City Zoning should be taken care of and made simultaneous with subdividing and Annexation

RECEIVED
DEC 28 1979
MONTANA LEGISLATIVE COUNCIL

BY James L. Hahn RLS

ATLAS ENGINEERS INC
2511 Old Martin Road
Billings, Mt. 59101

From City of Great Falls

Comments on Annexation

In response to your inquiry about providing comment on proposals by the Montana Legislative Council Study Committee on Annexation, as described in a letter dated December 19, 1979, we are providing the following:

Proposal 1) Reads as follows:

Provide that all freeholders, regardless of residency, be given the same rights in areas in which their property is proposed to be annexed;

We have no comment on proposal 1) as it appears to be a legal issue.

Proposal 2) Reads as follows:

Make clear the exception for mutual waiver of services enacted in Chapter 642 (1979) applies to continued provision of fire protection services by a volunteer fire department in a newly annexed area -- if the city and fire district agree to do so;

Annexation of an area served by the Black Eagle Volunteer Fire Department may be the only situation where this may apply due to the fact the fringe area rural fire districts contract with the City for services. Philosopically, we think the City would object to a requirement for continued provision of fire protection services by a volunteer fire department in a newly annexed area.

Proposal 3) Reads as follows:

Retain protest provisions in all instances except for:

- *a) areas blocking annexation of noncontiguous city-owned land, including industrial parks and utilities;*
- *b) all areas totally surrounded by property within the city except bona fide agricultural land -- a prohibition against "strip annexation" would accompany this change;*
- *c) contiguous high density land, whether within or without a fire district with a voluntary continued service agreement; and*
- *d) contiguous industrial and manufacturing land;*

As we understand these proposals, they are to eliminate some protest provisions and provide more flexibility and options for cities. We feel that philosopically the City would support this proposal.

Proposal 4) Reads as follows:

Reconcile annexation and subdivision laws so that unnecessary duplication is eliminated when an area is subdivided and annexed simultaneously;

The City should support this proposal.

Proposal 5) Reads as follows:

Provide for acquisition of and compensation for equipment and property of service districts when property in those districts is annexed.

We feel the City should object to compensation for equipment and property of service districts when property in those districts is annexed.

Although these comments are provided too late to be considered at Billings, possibly they could be forwarded to the Committee for consideration at future meetings in Missoula or Helena.

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ROBERT C. PYFER
DIRECTOR LEGAL SERVICES

Minutes

STUDY COMMITTEE ON ANNEXATION

Fifth Meeting
City Council Chambers

April 26, 1980
Missoula, Montana

Call to Order and Roll Call

Chairman George McCallum called the meeting to order at 9:45 a.m. Other members present were Senators Steve Brown, Bob Peterson, and Representatives James Azzara, Burt Hurwitz, and Gerald Kessler. Also present were Deborah Schmidt, researcher, Helen MacPherson, secretary, and visitors as listed on the attached visitors' sheet.

Chairman McCallum stated that the purpose of this meeting was to receive public testimony on discussion proposals and other annexation issues. He thanked those in attendance for coming, stating that their interest in the controversial issue of annexation is commendable.

Approval of Minutes

Chairman McCallum asked for a motion to approve the minutes of the previous meeting and Senator Brown so moved. The minutes were approved unanimously.

Review of Discussion Proposals

At the request of Chairman McCallum, Deborah Schmidt presented a report on the progress of the committee's deliberations to the present time. She also reviewed the discussion proposals that had been discussed at previous meetings, as well as additional proposals drawn up for today's meeting. (Copies of discussion proposals are on file.)

Public Testimony

The Chairman invited comments from those in attendance and stated that he would like to have a representative from the City of Missoula give the first presentation.

(The format of these minutes will list the name of the person testifying, followed by the main points of his testimony.)

Bill Cregg, Mayor of City of Missoula

- Welcomed the Committee to the City of Missoula; thanked the Committee for its concern.

- The City of Missoula has gone to the Legislature many times in the past seeking help for Missoula's annexation problems and hopes the Committee's deliberations result in this kind of help.

Tom Crowley - City Engineer for Missoula

- Missoula has experienced special problems with SID's where one side of a street is in the city and the other side is in the county.

- Usually people desire annexation because they want something from the city and most annexations have been by petition.

- Because of the complicated nature of the Missoula city limits many believe this has resulted in strip annexation and that while this may be true in one or two cases, it is not the general rule.

- Would encourage the Committee to find a solution to Missoula's problems because ultimately all of the people suffer, both in and out of the city.

Mr. Crowley demonstrated on city maps where the city limits now lie, those areas that have been annexed over the past several years, and areas that have been annexed which were not contiguous.

Rep. Kessler asked for an explanation of how these noncontiguous areas were annexed and Mr. Crowley replied that Mae Nan Ellingson, deputy City Attorney, would answer this question in her testimony.

Mae Nan Ellingson, Deputy City Attorney, City of Missoula

- State law defines contiguous as being that property which can be separated from the municipal boundary by railroads, streets, creekbeds, rivers, etc. Current law allows annexation by petition of property owners and contains no contiguous requirement.

- City maps indicate why the city feels there should be changes made in annexation laws.

- Next census will probably indicate that the population of the city of Missoula has declined while the urban area surrounding the city has increased in population.

- Most recent statistics from City-County Planning Board indicate that the area surrounding the corporate limits of the city

contains between 25,000 and 30,000 people who for all practical purposes should be considered city residents. This means that city taxpayers are supporting services for those 25,000 to 30,000 county residents who work, travel, and shop in the city.

- Has been working for the city for three years and can say absolutely that there is no desire on the part of the city to use annexation laws to take what is basically agricultural or rural land. The goal of the City of Missoula is to try to alleviate the inordinate tax burden that has been placed on city residents by unbridled growth outside the city limits and by the failure of the city to be able to incorporate those people into the city.

- Some people contend that disincorporation of the City of Missoula would equalize the tax burden, whereas disincorporation would actually create the most inordinate and unequal burden on property owners. County of Missoula extends all the way to Seeley Lake and includes areas such as Frenchtown and Lolo and people in those types of areas do not use city services to any large extent. Disincorporation would thus place an undue hardship on county rural people.

- Some of the recommendations the Committee is proposing for discussion would go a long way toward solving some of the problems, at the same time not giving cities unbridled annexation authority.

- Encouraged the Committee to eliminate the discrepancy between resident and nonresident freeholders. This discrepancy makes it more difficult for the city to annex because nonresident freeholders renting property have the right to protest annexation by the city. If this discrepancy is eliminated in 7-2-4301, MCA, the resident freeholder requirement in 7-2-4601 should also be eliminated because it is causing the city a lot of difficulty. That section of the law allows annexation by petition of the property owner and the section is basically unworkable because it requires that annexation be either on request of 50% of the resident freeholders or one-third of the resident electors. Asked that if the above changes are made that the Committee pay particular attention to part 46 of the annexation law.

- Asked that the word land rather than territory be used in order to provide consistency in the language of the statutes.

- In order to be fair and consistent the right to protest should be limited. Supports the Committee's provision to limit the right of protest where there is wholly surrounded land.

- City administration believes strip annexation is wholly inappropriate. Strip annexation is usually accomplished at request of property owners who want the services but because there is property between them and the city limits they cannot be annexed.

- Hopes the Committee will provide a density triggering mechanism in proposed legislation. Believes it will be difficult to come up with an appropriate mechanism and suggested that the Committee contact the Department of Community Affairs for information as to what constitutes urban living conditions.

- In a very dense urban area that is contiguous there should not be any right of protest. There could be descending amounts of density that would trigger a protest provision.

Rep. Kessler asked if the next census will show the city to be approximately the same size as outlying areas. Tom Crowley replied that the last census indicated approximately 20,000 reside in the surrounding urban areas and 30,000 reside within the city limits. He said that the density right outside the city is almost identical to the density inside the city and in some cases could be higher.

Rep. Kessler then asked if the next census would show both areas to be approxmiately the same size and Rep. Azzara responded that the total population now would probably be about 70,000 and most of this is in the urban area surrounding Missoula, usually defined as the valley.

Senator Brown asked if Lolo and Frenchtown are incorporated and Mr. Crowley said they are not.

Rep. Hurwitz said he has heard reference to the amount of tax that is paid in the City of Missoula and asked for a comparison between that amount and what is paid in other communities such as Helena or Billings.

Senator Brown said he would also like some figures on taxes for a $50,000 house both inside and outside the city.

Larry Hagen , Finance Director, City of Missoula

- There is an approximate difference of 23% on a house located inside the city as compared to a house of the same price located outside the city limits.

- All of the arguments against annexation boil down to the fact that people don't want to pay taxes because they are receiving all of the services they want from the county.

Mr. Hagen furnished written testimony regarding his philosophy on Missoula's annexation problems. (Copy attached).

John Toole, Alderman, City of Missoula

- Most of the people using the two city swimming pools are from outside of the city. The City has paid for the pools but more than half of the users come from the urban fringe and it is impossible to ask people where they live when they come to swim.

Mrs. Joan Hanger, Resident of Lower Rattlesnake Area

- Has been a resident of Lower Rattlesnake area for thirty years and has been paying city taxes for thirty years.

- In fall of 1976 a shift was made in the enrollment of grade school children in the Rattlesnake area. That enrollment is now assigned as follows: Grade 1, Lincoln School; Grades 2 - 4, Prescott School; Grades 5 - 8, Rattlesnake School. Prescott School is in city limits, Lincoln and Rattlesnake Schools are outside city limits.

- The area between the city limits and the Rattlesnake School is as thickly populated as the area between the Burlington Northern tracks and the city limits. The people living between the city limits and the Rattlesnake area have the same needs as those living in the lower Rattlesnake area -- fire protection, police protection, recreation, and sewer systems so that Rattlesnake Creek does not become polluted.

- Property owners around Lincoln and Rattlesnake Schools should accept the same responsibility as property owners around Prescott School.

- The people could get along better under one government than they do now under two.

Ellen Knight, League of Women Voters

- Missoula League of Women Voters totally supports principle that all people in a single community should have access to the same local and public services at the same tax rates and an equal say in the government which decides what the services shall be. (Written testimony is attached.)

William Boggs, City of Missoula Councilman, Ward Two

- Represents the 5,000 people in his ward and 30,000 residents of the City of Missoula -- the people, and not the government, who want and demand reform in the annexation laws.

- Commended the Committee on its work so far. Believes the study proposals are very encouraging and display a sensitivity to the various interests involved in the annexation question.

- With regard to the basic philosophy of annexation there are two central reasons why a city situated as Missoula is supports reform in annexation laws:

  (1) Rarely given much weight is the need for a certain integrity and uniformity of policies with respect to areas similarly situated. In the Missoula valley there is a lot of urban area with a lot of opportunities and problems -- two-thirds

of the area is under one government with one set of policies and one-third is under a different government with perhaps a different set of policies. People who are being governed by these two entitles are similarly situated and this makes for both incoherence and demoralization. Citizens living across one street are exposed to government policies that may be entirely contradictory.

(2) We are talking about a matter of equity. Some suggest that the city's desire for annexation is to increase city revenue. This is not true because we are not talking about increasing the amount of money in city coffers -- we are talking about a fair distribution of the burdens in a community. We are not talking about urban aggrandizement or threats to a rural autonomy -- we are talking about eliminating tax loopholes.

- Because we in Montana are dependent on the property tax for our local government revenues we tend to think the services we receive from local governments is centered on our homes. The person who lives in the county thinks there is good sheriff protection, fire protection, septic tanks, and the services that have to do with my home are being taken care of; therefore, no additional benefits would come from being annexed. This is not a rational point of view because a large number of the services that people receive have nothing to do with their residence -- they relate to downtown which is used equally by county and city residents and a large portion of public expenditures is used to maintain the business area.

- City residents pay a substantial tax for maintenance of the city police department. They also pay a county tax for maintenance of the sheriff department and the sheriff department dies not provide enforcement services within the city.

- In the Committee's review of laws of other states the conclusion is made that no other state has such a strong protest provision and no other state gives special consideration to special service districts such as a rural fire district. There is a good reason why no other state does -- for a rural fire district to be a crucial entity in the area of annexation is without legitimacy.

- Regarding the protest provisions -- everyone agrees they are fine when it comes to protecting rural areas from possible urban aggrandizement but in terms of areas which should be included within city limits, a protest provision is simply a method by which people can optionally refuse to pay taxes for services they receive. Our whole system is not structured to allow people to pay taxes only for those services which they wish to receive.

- County residents complain about services which they may or may not receive or restrictions or regulations that might be imposed it annexation were to take place. County residents now benefit equally with city residents with regard to parks, library, fire and police protection necessary to maintain the downtown area, and the enormous amount of road expenditures for streets travelled equally by city and county residents. But for county fire protection, county residents pay an exorbitant rate and their insurance rates are higher. Regarding sewage disposal, septic tanks are not cheap to maintain.

- Missoula is not an SMSA and county residents pay for that equally with city residents. The burden on county homeowners' budget resulting from loss of federal dollars is equal to that of city taxpayers as a result of not being an SMSA.
- Regarding restrictions that might be imposed -- restrictions that go with urban life and government represent an opportunity as well as a burden. These restrictions are not imposed tyrannically by the government but come about by the initiative of the citizens of a community. Zoning laws administered by the city may be viewed as unduly restrictive by county residents but theze zoning laws are essentially in effect at the will of the citizens. While one person may regard a restriction as a burden, his neighbor may consider it a benefit in order that some order may be brought to the environment in which he lives.

- Reviewed city's position with regard to Committee discussion proposals:

  (1) Protest provision. The protest provision should be eliminated with respect to urban density land, whether within or without a fire district and with a voluntary continued service agreement where a fire district is involved. The city would probably be willing to enter into an agreement with a group of people who wished protection to be continued by a rural fire department. If this were proposed by the Committee and adopted by the Legislature it would solve one of the major problems Missoula is dealing with in annexation.

  (2) Elimination of exemptions for wholly surrounded land. This is a step in the right direction. The city believes there is no rational reason wny an industrial site should be favored with no taxes when it is part of a community and shares in community services.

Senator McCallum asked if the library is funded by the city and the county and Mr. Boggs said that it is.

Ken Schinski, Cnairman of City Bikeways Committee and Missoula City Councilman

- There are some very serious safety problem that cannot be addressed properly because of where city limits lie. There are no sidewalks provided to some of the schools and the main traffic route coming from the Rattlesnake area has no shoulder or sidewalk to walk on.

- A top consultant has been hired by the city but the city has no positive input into the unsafe conditions in the county because it does not represent those people.

- The city cannot adjust to the increasing urban problems until there is unified management of the surrounding urban areas.

Howard Hanson, President of University Homeowners Association

- Represents the area east of Higgins and from South Avenue north to the river. His association has 350 members who reside in the city and their position is that there is a very big problem and something needs to be done about it.

- The double taxation of city residents is unfair and members of his organization are tired of it.

- Agrees that a density triggering mechanism is something that is needed to solve some of the annexation problems.

Leon Stalcup, City Alderman from Ward Five

- Represents approximately 6,000 people and the ward he represents has a portion in the middle that is in the county. This area is very urban in character and nothing about it would indicate that it is not in the city.

- Has conducted a telephone poll of 48 city residents and none feel they are being treated equitably.

Jim Jenson, Member of Board of Directors of Riverfront Neighborhood Association

- Believes the Committee must deal with the annexation issue from a perspective of dealing with right and wrong.

- Montana has a tradition of people paying their own way and when some, for whatever reason or under whatever pretense, don't want to pay their own way, it flies in the face of the American tradition.

- Committee work so far has been very good and supports several of the changes in the law that are being considered.

- As an example of how he views the annexation situation in Missoula, he stated, "I could say to George McCallum that next spring I'm going to be down to your place with 100 head of cattle and will put them on your place, hopefully in the best area of your land, and I would appreciate it if you will keep the fences up and the ditches clean. I'll be back in the fall to get them. Thank you very much."

Chairman McCallum retorted that Mr. Jenson would very likely be missing a few head of cattle when he returned in the fall.

Rich Ewing, Alderman, City of Missoula

- Strongly supports proposal that would provide annexation of wholly surrounded, residential high density areas, contiguous high residential areas, and contiguous industrial areas.

- City residents have been paying double taxes for quite some time and this tax burden should be distributed equitably.

- Intent of annexation laws is to hopefully benefit all residents. City residents will benefit by having the tax burden distributed among all residents who use facilities of the city; residents of newly annexed areas will benefit by standardization of city services and sound developmental and planning policies.

Yvonne Slovich, City Councilperson

- Existing annexation laws are inadequate.

- Represents 4,500 people on the north and west side of Missoula who are paying double taxation.

- The urban population is using city services without paying for them and there should be a fair distribution of the costs.

Kay Cain, Vice President and Secretary of Grant Creek-Colorado Gulch Homeowners Association

- Lives in an essentially rural area which was once a working ranch. This area is the most recently annexed area and it was annexed to the city to provide the people who wanted to develop it with water and sewer services which they needed to get the sort of density they needed. The area is a considerable distance for current city services and this was not taken into consideration.

- Challenged William Boggs' statements with regard to costs and problems of septic tanks.

- Association has 57 lots, none of which is less than one acre and they go up to 10 acres but are basically in the 2 - 4 acre range.

- City services have been detailed at this meeting as being fire and police protection, library, roads, parks, water and sewer, and transportation. Sympathizes with city because it has lost money because of size.

- Contrary to what Mr. Boggs says, what the city wants is money. The city wants to spread the burden and with annexation the burden will not be spread around -- it will increase for everyone. Areas that are annexed will demand first-class services and the city budget will have to provide those services.

- Suggested that there could be a middle ground and that would be the development of an urban service district with rates to be determined by the distance from city services.

- Would object very strongly to paying for city government, especially since if Grant Creek were annexed our problems would not be the same as city problems. We would be a very small cog in an urban district.

Representative Azzara said he is very concerned about some of the things Ms. Cain mentioned and that he has very mixed feelings about Grant Creek being developed at all, let alone being annexed. But, he said, that is water over the dam now and nothing can be done about it. He asked Mrs. Cain if it is likely that the density in her area will increase and if it is likely that the residents of Grant Creek would perhaps sell out to subdividers. Ms. Cain answered that that could not happen because of covenants. Rep. Azzara asked Ms. Cain what prospects she sees of being brought into the city even if it is across the street and Ms. Cain answered that it would depend on the definition of high density and that that figure can always change. Rep. Azzara asked that assuming the figure would be stabilized within state law, at perhaps four dwelling units per acre, what Ms. Cain would be concerned about at that point. Ms. Cain answered that she agrees whith those who say we need to share the cost of running the City of Missoula and she would support that the city should be maintained in a reasonable fashion because it is a resource that she depends on. She said, however, that her point is that the city doesn't provide her equally with services and she doesn't think it can. She said she is never going to be able to partake equally in city services but that, if annexed, she will be asked to pay equally.

Rep. Azzara asked Ms. Cain to answer his question directly. He asked, "If you are in a low density rural area and we are considering writing a law which would leave you in such an area and not give the city the right to annex in such areas, then what specifically is the concern that you are representing?"

Ms. Cain replied that low density is not clearly defined and she has heard several figures. Rep. Azzara asked if high density were clearly defined and stabilized would Ms. Cain then oppose it and Ms. Cain replied that she still thinks it would be more rational to establish urban service districts and annex less.

Rep. Kessler said that Ms. Cain has expressed concern that the city may annex her and not provide adequate services. He asked what her position would be if the law states that the city has to provide adequate services before it can annex. Ms. Cain replied that then she and everyone else in Missoula is going to pay through the nose -- that if the city is going to provide those services it has to pay for them and that will mean an increase in taxes. Rep. Kessler responded that he can't understand a city wanting to annex an area which will cost the city more and Ms. Cain said neither can she.

Paul R. Premenko, President of Target Range Homeowners Association

- Wished the record to state that the entire Target Range Home Owners Association, which is made up of a group of people who live in a rural area and love it, are opposed to annexation of any kind, now or in the future.

- There is a great difference in taxation in the city and the county. A 23% difference has been mentioned, yet his house in Target Range is taxed at $855 and a comparable home in Missoula would be taxed at $2,500, which is not a 23% split.

- There was a $39,000 fire west of the city because the city couldn't get the fire equipment out there and his company had to pay the loss. It was a gasoline fire and the city had to run the pumper trucks because there were no fire hydrants.

Mayor Cregg said this issue would be addressed later in the meeting.

- The City of Missoula has spent thousands of dollars studying traffic control and have not come up with a plan yet; the county has a study plan for the Target Range area, a new high school is being built, and a committee is working with the county to provide a walkway.

Rep. Azzara asked Mayor Cregg if the city has any interest in annexing the Target Range area, given the density that it now has. Mayor Cregg answered that the city does not want essentially rural people to be annexed -- that the city cannot provide the services.

Rep. Azzara said that as author of a bill that set a density factor that he not only agrees with Mr. Premenko and Ms. Cain but that he would join their efforts to fight annexation if their density remains where it is now. He said, however, that he does not understand their opposition to having high density contiguous areas bordering the city taken in. He stated that he would like to ask the people testifying as opponents of annexation to address why they would oppose high density contiguous areas being annexed. He added that he is with the opponents on the tax point and from an environmental point of view. He said he respects their wish to live an essentially rural way of life and that he does not want to be part of an effort to interrupt that.

Mr. Premenko said he wanted to go on record that he is opposed to annexation, now or in the future.

Rep. Kessler said he would like to ask the mayor or any member of the city council, in an effort to alleviate some of the fears of Ms. Cain and others, if they can imagine any city wanting to annex an area that would increase the taxes for the whole community. Mayor Cregg responded by stating that the annexations that have been made in the present administration, which goes back to 1975, have been by petition only. He said that people want to come into the city primarily for city sewer services. He said that he believes the city's actions over the last five years have shown that there is no justification at all for rural people to be opposed to annexation.

Senator Brown asked what kind of sewer and water services are provided in the Target Range area and Mr. Premenko responded that there is a hospital, a senior citizens' home, and the new high school, all of which have to be hooked up to a sewer system. He said that, slowly but surely, if the facilities are there, it doesn't take much before an administration decides it should annex. Regarding water, he said his area has its own private wells and septic tanks.

Senator Brown asked Mr. Premenko if his association has addressed the issue of density and the residents' desires for the future. Mr. Premenko answered that no decisions have been finalized as yet -- that the members of his organization just want to remain a rural area.

Representative Budd Gould, Representing Orchard Homes and Target Range Area

- Wished to address a point brought up by Rep. Azzara regarding why people are concerned about particular density figures in a bill. He said it is necessary to look at the legislative process and see what has to be done to get a bill passed initially and then to see that amendments can change the original intent of the bill. He said that in 1981 the figure could be four dwellings per acre, then in 1983 changed to two dwellings per acre, and in 1985 one dwelling per acre. He said that while Rep. Azzara's intentions may be good, he may not always be in the legislature to see that the figure is not changed.

- People in his area are not opposing annexation if they can have some say in the matter.

- The City of Missoula should be selling itself to the people in the surrounding areas and telling them what they can expect to receive in the way of services; then if people desire they can withdraw from a rural fire district and be annexed into the city.

- Has previously considered the matter of a tax shift according to what services are being received, somewhat in the same vein as Ms. Cain's suggestion.

- City does get some benefit from people in the county, such as the gasoline tax which is weighted in favor of the city. The 10% tax on alcohol that was enacted by the 1977 Legislature goes in a large share to cities rather than into rehabilitation and prevention of alcoholism as it should. City merchants are getting county residents' money which enables them to pay taxes that are supporting the city services that county residents don't pay for.

Mary Peterson, Resident of Grant Creek Area

- Wished to go on record as stating that living where she does, she has been silent for a long time and that it is now probably a little late to be speaking out.

- Lives one mile from the newly annexed city section of the Grant Creek area. Regarding testimony that property owners in that area wanted to be annexed, those property owners consist of one party -- The Grantland Association.

- Does not wish to be in the city. The services she has now are very adequate. Owns the only home within a six-acre area and would like it to remain that way but is sure it won't.

Sandra West, Target Range Citizens Against Rezoning

- Wished to make only one point. Recently her organization had to hire a lawyer to defeat a planned 20-unit condominium development and it cost nearly $800 to stop this development.

- Asked Committee to take note during its planned tour following the meeting of how closely areas meeting the proposed density figures are creeping up on the Target Range area.

Fred Brauer, Resident of Orchard Homes Area

- Has lived in Orchard Homes area since 1946 and does not represent any organization -- only a lot of people who think like he does. Wanted to make two points:

  All the testimony today has been about the need for change. Not one word has been said about the city's fiscal responsibility.

  The State of Montana and the United States is leaning more toward big government and the people are not represented. If the Committee does change the law, would hope that the right of protest is not removed so that the people can retain their right to self determination.

- Would like the Committee to consider strengthening the law that requires the city to provide services. There are examples where the city has not followed the law by providing services.

Donald Stinger, Orchard Homes Country Life Club and Orchard Homes Ditch Company

- Has lived in Orchard Homes area for 25 years. Opposes annexation because he wishes to live in an essentially rural area.

The hearing was recessed for lunch at 12:15. Testimony resumed at 1:50 p.m.

Bob Nofsinger, Resident of Rattlesnake Area

- The last time the city tried to annex his area a meeting was called and 350 people attended. They were unanimous in that they did not want to be annexed. 70% of property owners signed petitions against annexation.

- Wished to counter the charge made previously that Rattlesnake people are parasites taking advantage of city services without paying for them. Rattlesnake residents patronize city businesses which helps the businesses pay the city taxes.

- The city will run into trouble in trying to establish a density triggering figure.

- The city should try to sell annexation to the outlying areas by providing better services. County services are superior to city services in some instances, particularly snow removal.

Otto Benson, Resident of Orchard Homes Area

- Asked that the Committee provide him with a definition of agricultural land. Needs to know because a few years ago the city tried to annex Orchard Homes and he wants to be protected.

Chairman McCallum provided Mr. Benson with a definition of agricultural land.

Julie Hacker, Resident of Potomac and Property Owner in City and County of Missoula

- General philosophy behind writing new laws seems to be concerned with controlling more land and people who live on the land.

- People feel they are still in control when they live in a county area in a county fire district.

- Agrees that strip annexation should be abolished.

- No longer trusts government to take care of city sewer facilities because when the city had funds to be used to expand the city sewer facilities the money went to build city hall.

- City government must offer urban fringe and rural people better services to make annexation attractive.

- Opponents of annexation will be returning to the legislature in 1981 to testify again about the same annexation laws. If any proposed legislation does pass, he hopes it will be treated differently than zoning and planning laws. Major Subdivision and Platting Act has been amended regularly every session so that citizens cannot depend on laws staying the same.

Bruce Danser, Resident of Area East of Reserve Street

- Farms several plots and is concerned that there will be an exemption in proposed legislation for agricultural land.

- Concerned about urban pressures that are not compatible with farming because there are some indications that his land will become an island surrounded by city property.

- Does not want to see any changes in present annexation laws.

- Has agricultural interests in Billings area and is concerned that the clause in proposed legislation regarding industrial property may jeopardize his land because it is becoming surrounded by industrial land.

Bob Ellis, Montana Volunteer Firemens Association and West Helena Valley Fire District

- Was directly involved in enactment of Planned Community Development Act and its purpose was not to stop annexation but to give people on the fringes of cities the right to vote so that they could detach from a fire district and become part of the city if they so wished.

- Regarding the use of city streets by county residents, all main thoroughfares through cities have a sign designating them as interstates and they are maintained by the State of Montana, not by the cities. These streets are built primarily with federal funds.

- Regarding tax base for city taxpayers, if a piece of ground is annexed a resident can only be taxed at the same rate that the other residents are taxed. Consequently, unless property is for industrial use, annexation may result in more taxes.

- Regarding rural fire districts paying high mill levies, the West Valley Helena Fire District is paying under 6 mills.

- Regarding lowering rate of fire insurance, there are now a number of insurance companies writing policies at the same rate for county residents as for city residents.

Written testimony was received from Art Korn, Dave Fisher, and Mr. Ellis. (Copies attached.)

Chairman McCallum asked Mr. Ellis if he has come up with additional information regarding the pension question and Mr. Ellis stated that

he has been working with Art Korn on a plan that would be fair to the city and to the area to be annexed: whichever entity instigates annexation proceedings would put out an impact statment on both the city taxpayer and the area being annexed; then a vote would be taken to determine if the city taxpayer wishes to accept or reject the area or to determine if the area residents still wish to be annexed.

Helen Tabish, Resident Freeholder from Orchard Homes Area

- Has lived in Orchard Homes for 34 years. Residents of that area all agree that they don't want to be annexed to the city.
- Believes in the right to protest and that city residents should have the right to protest out of the city.
- City businesses charge enough to pay their overhead and taxes.
- Parking meters pay for the streets.
- When big government takes over the people lose their voice. Would like the Committee to consider the people when legislation is proposed.

Rep. Azzara asked Mrs. Tabish what she thinks of annexation which would not affect her area and she replied that if her area is surrounded she will be affected. She said that the services offered by the city are not that good and that the county provides good service. She said it would be better to have just a county government which would eliminate double taxation.

James Loftus, Board of Trustees for Missoula Rural Fire District

- Many statements have been made about the Missoula Rural Fire District, many of which are not true. A statement was made that the mill levy is 14 mills, whereas at the present time it is 11.4 mills. The highest it has been is 12.08 mills.
- Two years ago the city mill levy for fire protection was 27 mills. Testimony indicated that it is now 5.5 mills but he is not sure how city taxes and mill levies are figured.
- His fire district provides the best fire protection it can for a lot less expense than the city does.

Vera Cahoon, Chairman of Missoula County Freeholders Association

- Does not live in city or close to the city and would therefore not be affected personally by annexation but represents people who would be affected, some of whom live in the city and some of whom live outside the city.

- Her group has taken an official position of opposing the proposed legislation because the group was organized to protect free-holders' property rights and the right of protest is one of the main issues the group is concerned with.

- There has not been a good explanation of how high density will be determined. The group feels that once a bill is enacted the method of figuring high density could be changed.

- Since the city center is becoming vacant, wonders if the taxes being received from annexed areas will compensate for the additional services needed.

- Can accept some of the proposed legislation, particularly that addressing wholly surrounded areas and the abolishment of strip annexation. Also agrees with those portions of proposed legislation which retain the right to protest, although those provisions seem to be very few.

Rose Croonenbergh, Member of Hellgate Freeholders Association

- Lives in Missoula and owns a business in East Missoula.

- Has been informed that the City of Missoula does not want to annex East Missoula and that some councilmen think that East Missoula is not a desirable place. She hopes it stays undesirable.

- Has had many unpleasant confrontations with different government entities, the county being the last entity which was difficult to deal with and the issue was zoning. Her taxes tripled following the zoning of her property.

- Agrees that the city has problems with areas that are high density, East Missoula being one of those areas.

Ralph Cripe, Resident of Orchard Homes Area

- Objects to anything that has to do with the elimination of rural fire districts. A change in the law would take away any assurance that people in rural areas have that they stand a chance of fighting undesirable annexation.

- Believes legislators and city officials when they say they have no desire to annex some areas.

- In 1956 the City of Missoula attempted a land grab. Several resolutions were passed to annex a tremendous area between the Clark Fork River, Clements Avenue to the highway, and all of the area the city is interested in now south of town. The resolutions were soundly defeated, but there is no assurance that the next administration might not attempt another land grab.

- Has no objection to annexation that is carried on by the will of the people.

Charlene Miller, Resident of Target Range Area

- If density is used as criteria for annexation it should be compatible with the State Planning Board's criteria. The local planning board OK'd development of some town houses by the river where the drainage system was very poor. If the Target Range Homeowners Association had not been able to defeat the development the density would have increased and that part of the Target Range area would have been annexed into the city. That would have been unfair without the right of protest.

- Suggested that if an area is annexed into the city that the services to be provided by the city should be provided within a certain period of time or the annexation could be removed.

John R. Wittenberg, Missoula Planning Office

- Resides at 3939 Paxson Street, in the center of town, to the south, on one acre of ground. Has some business interests in East Missoula.

- City officials have people believing that they are supporting those who live on the urban fringe but actually the urban fringe residents are supporting the city population. The city is like a hub and it needs the spokes in the outlying areas to bring into the city what the city needs to keep alive.

- The outlying areas need the city for services and the city should be strengthening its services.

- If the city expands and takes in more area the city taxes will not go down.

- People should ask to be annexed and the people in the city should decide if they can afford to provide the additional services that would be required if an area is annexed. If the city residents decide they can't afford it they should have the right to not accept the annexation.

Ralph Eudaily, State Representative for District 100

- Is not speaking for or against the issue of annexation.

- Represents an area in the southwest part of Missoula commonly referred to as the Wapikia and South Hills area, Federal Hills and Cold Springs School area, and the Lower Miller Creek and Bella Vista area. From the discussion here today seems these areas could be classified as high density areas and would definitely be affected by any change in the annexation laws.

- Also represents the south side of Pattee Canyon and Upper Miller Creek and these areas would not immediately be affected by any changes in the annexation laws.

- His district would probably be about 70% outside of the city limits and 30% inside and the population would be about 60% out and 40% in -- a no-win situation for him.

- Extremely interested in the work of the Committee and is particularly in whatever legislation might be proposed. Personally does not oppose annexation but has strong feelings that it must be done in a proper manner and realizes that a review of the annexation laws is in order. Hopes that in reworking the annexation laws that the right of people to make a choice as to whether they wish to be in or out of the city will not be done away and strongly suggested that the right to protest be retained.

- Said earlier testimony today indicated that the city and the people in an area to be annexed must agree on the type of services that would be best for the area, such as city or rural fire protection. Asked what proposal the Committee has for resolving disagreement in this matter. If the city makes the final determination this simply softens the blow for annexation.

- Concerned that many of the annexed areas may not have immediate and proper representation in city government.

- Concerned about the five-year plan. Would hope that any annexation plan would prohibit the levying of city taxes on newly annexed areas until they actually begin to provide services that have been agreed upon.

Rep. Azzara asked Rep. Eudaily what he thinks about the right to protest in cases where an existing area of the city has some dissatisfied home owners and they want to protest out of the city -- if that is a right they should have. Rep. Eudaily replied that they should have that right. He said that the trouble with protest is that someone gets their hands tied and a way has to be developed so that people can react to a situation. He added that in some cases in Montana annexation has been slowed down and even stopped by the protest provision but he still thinks a way has to be figured out so that people have the right to protest.

Rep. Azzara said that if an area is defined that is for all practical purposes a city area and the people can resist coming in that this is the same thing as saying that people in the University area should have the right to leave the city if they want to. He said that the right should be reflexiive if it is legitimate at all. He added that the Wapikia area is surrounded by the city, it is high density, all of its border is contiguous, and it meets every definition of city that the University area does and is no different and yet the University area can't get out of the city by protest, but Wapikia can stay out. Rep. Eudaily said that at some time in past history the people in the University area had the right to protest to come in or not come in.

Sen. McCallum stated that he believes any bill that would be passed by the legislature would have the right of protest in it.

Mayor Cregg asked if the city would have an opportunity to refute some of the testimony opposing annexation. Chairman McCallum said he did not foresee providing time for rebuttal. Rep. Azzara said that he felt the city should be heard in rebuttal as long as it kept to reasonable time constraints since the purpose of the hearing is to find out all the information possible. He asked that the matter be put to Committee vote if the Chairman did not agree that the city should be heard to rebut previous testimony.

Melvin Moon, Hawthorne Homeowners Association

- A lot of testimony has indicated that the city cannot annex because a rural fire department can stop annexation. Everytime someone wants to petition out of a rural fire department he gets a card in the mail from the county that a certain area wishes to petition out of the rural fire department and be annexed by the city. There is no way that a rural fire department ever stops anyone from being annexed. If people wish to be annexed by the city it is their prerogative.

Joe Gasvoda, Resident of Orchard Homes Area

- Not strictly opposed to annexation but thinks it should be done in an orderly manner. Annexation will automatically take place as the demand for city services increases.

- The city has never made an attempt to annex the Daily Addition because the tax base is low there.

- Many people live in outlying areas because they don't want the super city services. They should have the right to decide this.

- Was a fire chief in a rural fire department for five years. Salaries alone for the city are more than the entire cost of a rural fire department.

Fred Van Valkenburg, State Senator Representing District 50

- Represents a district that is composed of city and highly urban county areas and therefore does not have the pleasure of representing a constituency that is 100% behind him on this issue.

- Hopes the Committee realizes that the problems in Missoula are unique as opposed to the problems of Butte, or Billings, or Niarada or other districts represented by Committee members.

- Local government in Missoula has gone through the throes of many ups and downs with different types of mayors and city managers and city councils and that accounts for some of the unique problems Missoula is now faced with.

- Proposed an idea that has not been mentioned in testimony so far but that was included in some of the research materials prepared by Deborah Schmidt. Suggested Committee consider the creation of a boundary commission. A statutorily authorized boundary commission could deal essentially with local problems and there could be a separate boundary commission for each county so that each area can deal with their annexation problems within the unique framework of the historical growth patters of the area.

- Communities should look for that which we have in common rather than continually look for differences.

- Does not believe that there is a desire on the part of the city to annex the upper Grant Creek area that Mrs. Cain was so concerned about. Doubts seriously that within the next decade there will be

any attempt to annex the far reaches of the Target Range or Orchard Homes areas. But there is an immediate need to annex areas that are probably within his own senatorial district -- such as the Wapikia and Belleview areas.

- Does not think the city should be able to escape annexing the Daily Addition because it has a low tax base.

- The City of Missoula has to realize that the Missoula Rural Fire District has become and will continue to be a political entity that people outside the city will rally around and recognize as a spokesman for their interests.

- If a boundary commission should become a reality it could make some decisions about where the city boundaries ought to be and it may be appropriate that the Missoula Rural Fire District have an important voice on the commission.

- Believes protest provisions should be dealt with by a boundary commission and does not think it is appropriate, even though it may be politically popular, and politically unavoidable in some people's minds, to give every property owner the right of protest. This creates a chaotic situation that leads to avoidance of an issue.

- People get involved in a rumor mill and often get misinformation and sign protest petitions based on that misinformation. A boundary commission would provide a representative for those people in a governmental setting and a dialogue can take place which will air the issues.

- Urged the Committee to find some overall general framework in which problems can be dealt with and believes a local boundary commission could provide this framework.

Warren Heyer, Resident of Orchard Homes Area

- Took issue with Senator Van Valkenburg's suggestion for a boundary commission. When there is a sensitive issue that affects everyone there is no better forum than what is taking place here today.

- Regarding the snow plowing issue, owns property just off of University Avenue and during heavy snows last winter plowing was all but negligible. Yet county streets were plowed in good fashion.

- City of Missoula has an abyssmal record of taking care of city streets.

- Avoids coming into the city because of the poor parking situation and has to pay meters for the right to shop in town. Much prefers to use facilities outside of the city.

- Challenged testimony of William Boggs on cost of maintaining a septic tank. Other testimony by city officials on amounts of mill levies is reason for distrust of the city administration.

- When the City of Missoula sells itself to surrounding areas as a viable government agency that will provide honestly and completely the service it should provide to its residents, most of the county residents will be fighting to get in.

James Putnam, City Councilman from Whitefish

- Whitefish is having the same problems as Missoula and the future holds a compounding of these problems unless the annexation laws are changed.

- Area is unique because it is a tourist area and because it has spread out along the lake and consequently there are large numbers of acres and lots that are completely surrounded by city limits.

- Would like §7-2-4501, which deals with annexation of wholly surrounded lands by citizens of first class communities, to include second and third class communities.

- Would like a clear definition of contiguous lands.

- Would like to see language in §7-2-4302 made compatible with language in Planned Community Development Act.

- Would like clearer language in §7-3-606 regarding dedication of land to the public or cash in lieu of land.

- Would like to see right to protest provision retained and made applicable to second and third class cities.

Douglas Rourke, Property Owner at Corner of Reserve and Highway 10.

- Owns 3 1/2 acres and has been involved in a solvent salvage business and realizes that a salvage business cannot be operated within city limits. Asked if there is a provision for a wrecking yards or for raising livestock within the city limits.

Chairman McCallum told Mr. Rourke that this would be covered in the city ordinances.

Rep. Azzara asked that Mayor Cregg be given an opportunity at this time to answer arguments of opponents of annexation.

Mayor Cregg - Rebuttal Testimony

- Ninety percent of opposing testimony has been from people from Target Range, Orchard Homes, East Missoula, Upper Grant Creek, and areas that the City does not want to annex. The City can't afford it.

- Joe Gasvoda referred to a land grab by the city in 1956. Has no recollection of any land grab and has lived in Missoula since 1955.

- City only wants to annex what should legitimately be annexed -- high density areas, those with four homes per acre, and land that is contiguous or wholly surrounded.

- Everything heard from people in outlying areas is simply a red herring. It should not prejudice the Committee against the city's right to take what it legitimately should be able to take.

- The hearing was turned into a quasi-freedom speech on behalf of Fred Brauer, the County Commissioner candidate.

- Ralph Eudaily said it is the American right to protest. In 49 states there is a right for cities to grow naturally. What about the City of Missoula's rights.

- Regarding snow removal, we have 65 mills to run the city and because the county has a lot of money to make sweetheart deals people want to stay in the county.

- The 30,000 people in Missoula have the right to protest too.

- Those proposing annexation don't believe me politically, they don't believe me philosophically, they don't believe me morally. Perhaps they will believe me arithmetically -- We know what it is going to cost to provide city services to the Upper Grant Creek area and other areas and we know what the income is going to be and we can't afford to annex those areas.

- People are upset because the city has annexed by jigs and jags. The city did that by petition.

- The city does want the Daily Addition -- those people are the same as everyone else.

- The county people are very pleased that they are paying for their share of the library. The city is paying a double share of the library. The big expense of the library is running bookmobiles to the outlying areas. Fifty-two percent of the bookusers at the library are county residents but 64% of the library costs are paid by city residents.

- The city paid for the swimming pools. The quarter pays for the lifeguard. The city owns the land and the city paid for the construction.

- Regarding the quality of fire service, provided written statement on circumstances of the $2 million dollar fire with the resulting $35,000 loss. (Copy of statement attached.)

- The city has a highly professional police force.

- Since the implementation of the gas tax city streets have been virtually perfect.

Chairman McCallum thanked all in attendance for coming and stated that he is not sure there is an ideal piece of legislation that will please everyone. The hearing adjourned at 4:00 p.m.

Visitors' List

April 26

Conservation

NAME	REPRESENTING
Bud Gould	Dist 98
D.W. Bud Miller	Target Range Home owners Ass
Charlene Miller	" " " "
ART KORN	MONT STATE VOL FIRMEN'S ASSOC
David J Maclay	Self.
Robert E Wofinger	Rattlesnake
Arthur Lehti	Self
Otto E. Benson	Self
Eugene F Donaldson	Self
Donald R Moravec	Self —
Vi Moravec	Self.
R. H Higgon	Self
Daisy B. Jacobs	self.
Clapton	self.
Julie Ann Hacker	self
Vera M. Cahoon	Missoula Co. Truckdrivers
Ellen M Imboden	Hellgate Truckdrivers
Rose Cronenberghs	Hellgate Truckdrivers.
Bruce Simmons	Missoula Rural Fire District
Anita Brennan	League of Women Voters
Clarence Bauer	Southwest
Melvin L Moon	HAWTHORN HOME owners ass
Harry Klapp	SELF.
Sue E. Higgon	Self

Visitors' List

NAME	REPRESENTING
Jim Nugent	City of Missoula. 3208 Hollis
Leon Stalcup	Ward 5 Missoula
Jeanne Y. Ramsavage	Ward 2 Missoula
Bill Cregg	City of Msla
[illegible] Toole	" "
[illegible]	Helena, Montana
Richard Skelton	Self.
Kay C. Cain	Vice President – Secretary Grantland-Lolo Radio Guild Assoc
Ellen Knight	Missoula League of Women Voters
Paul R. Trunk	Pres. Target Range Homeowners Assn. H.O. Assn
Terry Knight	Candidate for State Senate
Harriette Dooley	Missoula Urban Transp. Dist. Board
Edric Berke Bowers	1205 Idaho, Msla, Mt.
Ray E. Moore, MD	Target Range Homeowners Assn.
Dorothy J. Byrne	City of Msla. – 509 Hastings
Fred O. Bauer	1809 Reserve St. Msla, Mont
Ann M. Mayer	Helena Amtrak Long way return Train
Florence M. Bible	
William Boggs	City of Missoula
Joseph W Gazsoda	2610 Spurgin Road
Jan Johnson	2320 Shan

Visitors' List

NAME	REPRESENTING
Samuel Johnson	4625 O'Brien Cr. Rd
Vernon L Erickson	Mont State Firemen's Assoc.
Marshall R. Kyle	730 Youngstaff
Sandra Kay West	106 River Pines Rd.
Mary Jo Riddell	2713 Glen Dawn
Glenn Randles	945 4th W. Riverside
Neal M. Rahn	Southside Neighborhood Association
James D. Jensen	Riverfront Neighborhood Assn.
Laura L Bakker	2220-36th Ave.
W. M. KIRKPATRICK	3825 LINCOLN RD Missoula
William O. Coffee	1231 Gerald Ave
Eugene Williams	Rt. 5, Pt Hill Canyon
Cass Chingkg	717 Cherry - MISA - City Council
James A Loftus	14522 Hellgate Ln Clinton
Leonard Conrad	1501 Cooper (MYSELF)
Richard W. Solomon	self - Missoula
Joan Granger	Lower Lolo Neighborhood
[illegible]	Missoula City Council
Howard Tool	Missoula City Attorney's Office
Lloyd E. Meyke	Member of Freeholder Assc.
Ralph L. Eudaily	State Representative - Dist 100
Janet Jensen	Justice of the Peace
Mae Nan Ellingson	City of Missoula
Fred R. Van Valkenburg	Senate Dist. 50

Visitors' List

NAME	REPRESENTING
Larry McKeggan	City of Missoula
Leonard Hanson	Missoula County Commissioners Assistant
Bob Johnson	Mcla. Rural Fire Dept.
Bruce G. Benson	Orchard Homes
WARREN K HEYER	" "
Esther B. Heyer	" "
Lt. E. Blankette	TARGET RANGE
John Kellogg	Missoula Planning Office
John L. Wittenberg	3939 Lupton Lane
Helen Tabish	Orchard Homes
Nap Tabish	Orchard Homes
James C. Putnam	City of Whitefish Mt.
Glenna Orr	City of Whitefish.
E. Millhouse	817 Edith St. Mcla.
Tom Crowley	City of Missoula
Gayle Shirley	Missoulian
Ben Healy	Self
J. A. Ellis	Asst. Mont State Val Finances
Macy Peterson	Grant Creek
Dan Peterson	Grant Creek
Gerald A. Haines	3920 Buckley, Mcla
Edward E. Brandt	3666 West Central Mcla
Paul E. Cripe	3030 S. 7th St. W.
Donald C. Shrieve	245 N. Davis St.

HEARING
STUDY COMMISSION ON ANNEXATION
APRIL 26, 1980

IT IS IMPORTANT THAT WE ADDRESS THE PHILOSOPHY OF ANNEXATION IN THE SAME MANNER AS OUR PREDECESSORS ADDRESSED THE PHILOSOPHY OF INCORPORATION.

THAT IS, IF RESIDENTS OF THIS STATE GROUPED TOGETHER IN SUCH A FASHION SO AS TO DESIRE OR NEED MORE PUBLIC SERVICES THAN THE STATE OR COUNTY COULD PROVIDE, THEY WERE ALLOWED TO FORM A CLOSER MORE COMMON LEVEL OF GOVERNMENT TO PROVIDE THESE LOCALIZED PUBLIC SERVICES. THUS, INCORPORATION PROVIDED THESE RESIDENTS WITH A SYSTEM OF LAW ENFORCEMENT REQUIRED BY THE URBAN NATURE OF THEIR ENVIRONMENT, A SYSTEM OF STREETS WHICH COULD HANDLE POPULATED CENTERS, FIRE SERVICES WHICH COULD PROVIDE THE LEVEL OF PROTECTION NECESSARY, AND WATER AND SEWER SYSTEMS WHICH WOULD INSURE SANITARY CONDITIONS. ALONG WITH THIS DESIRE FOR ADDITIONAL PUBLIC SERVICES WAS THE KNOWLEDGE THAT "HE WHO USES MUST PAY THE COST" THROUGH MEANS OF TAXATION.

I DOUBT THAT ANYONE ASSUMED THESE COMMUNITIES WOULD NOT GROW OR THAT THIS GROWTH SHOULDN'T HAVE TO SHARE IN THE FUNDING OF THESE SERVICES. WHY HAS THIS PHILOSOPHY CHANGED? WHY ARE NEW USERS OF THESE ADDITIONAL SERVICES ALLOWED TO EXEMPT THEMSELVES FROM PAYING? IMAGINE WHAT WOULD HAPPEN IF WE ALLOWED PEOPLE TO "PROTEST" OUT OF A SCHOOL DISTRICT. HOW MANY TAXPAYERS DO YOU THINK WOULD VOLUNTEER TO REMAIN AND PAY SCHOOL TAXES IF IT WAS OPTIONAL. THIS REALIZATION COULD APPLY TO ALL TAXING AUTHORITIES, HOW ABOUT AN OPTIONAL UNIVERSITY SYSTEM LEVY.

THE THEORY OF FINANCING PUBLIC SERVICES IS TO ESTABLISH A BASE OF VALUES FOR

TAXATION WHICH MOST NEARLY REFLECTS THE BENEFICIARIES OF THE SERVICE PROVIDED. YOU HAVE VIEWED THE MAPS AND BOUNDARIES OF THIS CITY AND I'M SURE YOU MUST AGREE THAT THEY DO NOT REFLECT THE BENEFICIARIES OF THIS COMMUNITY'S SERVICES. IN FACT, WE HAVE A TAXPAYING POPULATION OF 30,000 SUPPORTING A COMMUNITY OF 50,000. IT HAS BEEN STATED THAT THE NON-INCORPORATED AREA OF MISSOULA IS THE 7th LARGEST CITY IN THE STATE.

WE ALL HEAR ARGUMENTS AGAINST ANNEXATION SUCH AS PEOPLE DON'T WANT TO PAY CITY TAXES BECAUSE THEY'RE RECEIVING ALL THE SERVICES THEY WANT FROM THE COUNTY. LET'S EXAMINE THAT PHILOSOPHY. THE SERVICE REQUIREMENTS FOR THESE UN-INCORPORATED AREAS ARE THE SAME AS FOR A CITY. THEY NEED A SYSTEM OF STREETS, ADDITIONAL LAW ENFORCEMENT, BETTER FIRE PROTECTION, RECREATION FACILITIES AND ASSURANCE OF SANITARY CONDITIONS. WHO'S PAYING FOR THESE SERVICES, THE RESIDENT TAXPAYER, OF COURSE, BUT INSTEAD OF THESE DENSLEY POPULATED AREAS BEING SUPPORTED BY A TAX BASE OF COMMON INTEREST, SUCH AS ALL RESIDENTS OF THE COMMUNITY, THEY ARE BEING SUPPORTED BY COUNTY-WIDE LEVIES. THIS MEANS THAT RURAL RANCHERS AND RESIDENTS IN UN-INCORPORATED TOWNS THROUGHOUT THE COUNTY ARE HAVING TO PAY HIGHER COUNTY TAXES TO Support THESE HIGHER COST SERVICES TO URBAN TYPE AREAS.

DO YOU BELEIVE THE RANCHER IN FRENCHTOWN WOULD HAVE TO PAY FOR A COUNTY SHERIFF'S OFFICE OF 85 EMPLOYEES IF HE DIDN'T HAVE TO SUPPORT LAW ENFORCEMENT SERVICES TO 20,000 PEOPLE LIVING IN MISSOULA.

DO YOU BELIEVE THE STORE OWNER IN SEELEY LAKE WOULD HAVE TO PAY FOR 65 COUNTY ROAD AND BRIDGE EMPLOYEES, INCLUDING 8 ENGINEERS, 6 SURVEYORS, A TRAFFIC SUPERVISOR, AN OPERATIONS ANALYIST AND A PRODUCTION EXPEDITOR IF HE DIDN'T HAVE TO SUPPORT BUILDING AND

MAINTAINING 80 MILES OF CITY TYPE STREETS.

DO YOU BELIEVE THE FAMILY LIVING ALONG LOLO CREEK WOULD HAVE TO PAY $95,000 FOR COUNTY PARK MAINTENANCE IF THEY DIDN'T HAVE TO PROVIDE OPEN SPACE FACILITIES FOR URBAN DWELLERS.

IN CONCLUSION, I WOULD HOPE THAT WE CAN GET BACK TO THE ORIGINAL PHILOSOPHY OF ANNEXATION AND DO AWAY WITH UNREASONABLE RESTRICTIONS THAT HAVE CAUSED SUCH AN UNEQUITABLE BALANCE BETWEEN THOSE WHO USE AND THOSE WHO PAY.

THANK YOU.

Larry M Hagen
Finance Director
City of Missoula

To: Legislative Interim Committee on Annexation
From: Missoula League of Women Voters
April 26, 1980

The Missoula League of Women Voters strongly supports the principle that all the people in a single community should have access to the same level of public services at the same tax rates, with an equal say in the government that decides what the services shall be.

The densely settled eastern part of the Missoula valley forms a single community--geographically, economically and socially. But politically it is divided by an invisible line into two communities with different kinds of services and taxes under different local governments.

As a result, there are inequities in both services and taxes. For example, some of the people do not have access to the sewage treatment plant; others are paying more than their fair share of the public costs of the urban area. There is also jurisdictional overlap and confusion.

People in the urban fringe share with city residents many facilities which are located inside the city limits. The hospitals and doctors they go to for medical care; the high schools their children attend; and the commercial districts in which they buy goods and services and which in turn provide many of them with jobs, are inside the city. Many of the religious, civic, recreational, and social activities of the valley also take place in the city.

But the people outside the city do not share the public costs involved in using these facilities, even though the main reason they are living near the city is because of the goods, services, jobs and amenities it offers.

It is the city taxpayers who support the fire protection for the shared facilities; they pay for many of the streets which provide access to the buildings; they bear the cost of much of the traffic control in the city as well as the cost of police protection. City property owners also pay some of the cost of other services such as parks that benefit their suburban neighbors.

Such inequities can be lessened by various kinds of changes. If annexation laws were changed, the city could extend its boundaries by annexation to include all the densely settled area; it could disincorporate, followed by the formation of an urban service district; or a new unified government could be adopted with the county divided into districts which received different levels of services at different levels of taxation.

However, if annexation is to be a useful tool in lessening inequities, then it is obvious that the rural fire district's situation would need to be examined, because in making any kind of change it is only common sense to avoid the possibility of creating a new injustice when ending an old one.

The legal purpose of a rural fire district is to provide fire protection for rural areas. The Missoula Rural Fire District is doing an excellent job of protecting rural areas; it is also protecting densely populated residential neighborhoods.

Missoula League of Women Voters (cont.)

In addition, while the rural fire districts lobby to protect the pensions of their volunteer firefighters and their own power as a political entity, they also serve as a political pressure agent for those people in the urban fringe who are opposed to annexation.

Hence, if changes were made in the state laws both old and new injustices could be prevented. Changes to assure that services and taxes would indeed be equalized should lessen the objections to annexation for those in the urban fringe. A reasonable pension system for firefighters could be protected and rural fire districts could be permitted to continue serving residential areas after annexation, under equitable tax arrangements.

A just annexation law could serve as one tool among several possible tools, to solve problems of service and tax inequities.

Ellen Knight

Ellen Knight, President
Missoula League of Women Voters

...irch	Cut Bank	Presidant	Keith Grice	Somers	Vice-Pres.	Dist. #1
... Gray	Belt	Vice-Pres. at Large	Lloyd Greenup	Hamilton	Vice-Pres.	Dist. #2
...ur J. Korn	Butte	Secretary-Treasurer	Al Van DenBus	Conrad	Vice-Pres.	Dist. #3
			Clem Duaime	Butte	Vice-Pres.	Dist. #4
			Frank Frankovich	Stanford	Vice-Pres.	Dist. #5
			Lyle Stortz	Roundup	Vice-Pres.	Dist. #6
			Bob Hanson	Wolf Point	Vice-Pres.	Dist. #7
			Arlin Andersen	Plevna	Vice-Pres.	Dist. #8

Montana State Volunteer Firemen's Association

From the Office of
ARTHUR J. KORN, Sec'ty-Treas.
1916 So. Washington St.
Butte, Montana 59701

April 26, 1980

Senator, George McCallum, chairman
Study Committee on Annexation Laws
Montana Legislative Council
State Capitol Building
Helena, Montana 59601

Chairman McCallum and Members:

The following are some comments and testimony for your April 26th meeting in Missoula.

Are there any recommendations for the freeholders right to vote, or protest within a volunteer fire district.

Section 2. We are certain that City Paid Firemen and Volunteer Firemen cannot work together, and what would be the advantage of volunteer firemen fighting fires, and paying the same taxes as the city area, most certainly that would not work.

Section 3 (c) We can understand about the city annexing contiguous high density land, within a volunteer fire district for a bigger tax structure, but this is going to put more burden on the city, and in the long run is not going to help solve their problem. These areas outside of the city proper and established within a volunteer fire district have all the services that the city can offer. one other point if the cities take away these areas in the volunteer fire district, then the volunteer fire district is going to hurt for tax pruposes.

Again, let me say these prople made their choice by moving out of the city and building their homes, that is their way of life, and more and more people are moving in the country, their reasons vary, some for more space, and some for cheaper taxes, but no one made them move, it was by their own choice. They are satisfied with the services and happy, so why take all that away from them and force them to be annexed into the city, and pay more taxes.

I would like to recommend or suggest that a financial impact statement be made by the city, and also one for the existing volunteer fire district, on the merits of annexation.

Ed Mitch	Cut Bank	President	Keith Grice	Somers	Vice-Pres.	Dist. #1
Gary Grey	Belt	Vice-Pres. at Large	Lloyd Greenup	Hamilton	Vice-Pres.	Dist. #2
Arthur J. Korn	Butte	Secretary-Treasurer	Al Van DenBus	Conrad	Vice-Pres.	Dist. #3
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			Bob Hanson	Wolf Point	Vice-Pres.	Dist. #7
			Arlin Anderson	Plevna	Vice-Pres.	Dist. #8

Montana State Volunteer Firemen's Association

From the Office of
ARTHUR J. KORN, Sec'ty-Treas.
1916 So. Washington St.
Butte, Montana 59701

April 26, 1980

Dear Senator McCallum,
and members of the
Annexation Laws:

My name is Dave Fisher, and I am a member of the Montana State Volunteer Firemen's Association, and also a member of the Chief's Association, as I am not able to be at this meeting in Missoula, because of other comments, I would like to make several comments.

Section 2) What if no agreement is reached. Section 3), a) and b). This seems like a Hitler or dictate provision, and is strictly a city tax grab. who puts in all the improvements, and is this done before or after annexation, and who pays for this. What is a bona fide agricultural land.

Section 3) c) The volunteer fire departments are not in favor of this section and thought should be given to the ten year clause to give some protection to those old established fire districts.

Section 5) Who is to obtain equipment and property, some of this equipment, and property was not all tax supported money.

Section 2A, 3A, and 4A Where is the right of protest in any of these sections.

Volunteer pensions are not covered anywhere in these recommendations, and I believe that is a very important factor.

When and if the city fails to meet all the requirements of the annexation method adopted, how do those taxpayers get their taxes refunded?

Yours very truly,

Dave Fisher.

Dave Fisher

West Helena Valley Volunteer Fire Dept.

P. O. Box 84
HELENA, MONTANA 59601

April 25, 1980

: [illegible] Committee on Annexation

[illegible]cel that Sec. (1.) is long overdue.

Sec. (2.) will have some problems as to the paid firemen.

Sec. (2.) Sub. Sec. (1.) needs further explanation.

Sec. (2.) Sub. Sec. (3.) Needs the high density trigger spelled out in the law.

We will reserve til later the comment on Proposals (1.A.) through(4A.)

We propose that an Economic Impact Statement, submitted to the city taxpayers and the freeholders that are proposed to be annexed.

Also, the freeholders should have the right by vote to accept or reject the proposed annexation.

If they accept, then the city taxpayer should have the right to accept or reject the area proposed for annexation.

B. A. Ellis

B. A. Ellis
Montana [illegible] Volunteer Fire [illegible] Assn

Fire at Missoula Truck Sales

July 19, 1979 - 2:18 P.M. - Thursday

Caused by a welding accident in the paint room. When pumpers arrived the paint room, all solvents and paints were fully involved in fire. The fire was beginning to extend into the rest of the building through vents.

Three pumpers with 1500 gals. of water and fourteen firefighters arrived within six minutes of the report.

One pumper controlled the fire within five minutes. 500 gals. of water was used for control. The other two pumpers brought a water supply line from a hydrant in Travois village. This line will supply 400 gals. per minute.

3. Pass new Annexation Reform Act.

Reason for request:

a. Make City boundaries more equitable based on jurisdiction, services and demands.
b. Provide for a simpler delineation of City boundaries.
c. Provide for the fact that people living, working and recreating in the urban area pay equally for urban community services.
d. Present Community Development Act is one sided and does not take into account that Montana is a state that uses SID's for improvements, i. e., you pay for public improvements as they are required.
e. Rural Fire Departments should not dictate City Limits. Suggest Annexation Reform Act is as follows:

City limits will be set by joint resolution by two thirds vote of County Commissioners plus majority of City Council. The City boundaries will be fixed as deemed reasonable for purposes of jurisdiction, services and demands on the urban governments. The urban area would be urban in character and developed with at least two dwellings per acre or developed commercially plus include lands already within City limits. Lands may be annexed by the City when petitioned for annexation when contiguous and when determined by the City and County to be to their best interest to accept the change.

Procedure for annexation would involve the following:

1) Planning Board shall designate urban area and recommend City limits.
2) City Council will recommend their desired City limits.
3) County Commissioners will recommend their desired City limits.
4) Proposed City limit boundaries will be agreed to and a public hearing will be held in joint session. Final City limits will be set by joint resolution of City and County within four weeks after public hearing.

COMPARISON OF 1979-1980 TAX LEVIES

IN-CITY VERSUS OUT-OF-CITY*

1979-1980 Total Taxes Levied Against:

	City Taxpayer	County Taxpayer
County	40.91 Mills	52.14 Mills
City	85.14	
Missoula Rural Fire Department		14.04
Urban Transportation	7.10	7.10
State Levies	7.00	7.00
School Levies	183.55	183.55
TOTAL	323.70 Mills	263.83 Mills

Total Levy Inside City is 59.87 Mills or 23% Higher Than Urban County.

COMPARISON OF TAXES ON $80,000 HOME

IN-CITY VERSUS OUT-OF-CITY

	City Taxpayer	County Taxpayer
Taxes	$2,196.40	$1,804.59

City Taxpayer pays $391.81 or 22% Higher Taxes

*For Purposes of This Comparison Out-Of-County Represents an Urban County Residence in Taxing District #1.

City of Wausau

Comparison of Tax Rates

and Valuations - 1979-80

	Mills	[illegible]	[illegible]
[illegible]	69.30	$ 25,[illegible]	$ 1,512,[illegible]
[illegible]	79.35	58,502,154	[illegible]
Edgerton	95.43	20,131,732	[illegible]
Kenosha	66.32	30,627,[illegible]	[illegible]
[illegible]	85.13	47,311,[illegible]	[illegible]

APPENDIX F

HOUSE MEMBERS
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CHAIRMAN
REX MANUEL
ROBERT L. MARKS
JOHN VINCENT

SENATE MEMBERS
PAT M. GOODOVER
VICE CHAIRMAN
CHET BLAYLOCK
CARROLL GRAHAM
FRANK HAZELBAKER

Montana Legislative Council
State Capital
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CODE COMMISSIONER

ELEANOR ECK
ADMINISTRATIVE ASSISTANT

ROBERTA MOODY
DIRECTOR, LEGISLATIVE SERVICES

ROBERT PERSON
DIRECTOR, RESEARCH

SHAROLE CONNELLY
DIRECTOR ACCOUNTING DIVISION

ROBERT C. PYFER
DIRECTOR, LEGAL SERVICES

SUBJECT: Polson v. Public Service Commission and most recent complaints to the PSC on provision of water and sewer services outside city limits

DATE: February 25, 1980

PREPARED FOR: Study Committee on Annexation

PREPARED BY: Deborah B. Schmidt, Researcher

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ROBERT C. PYFER
DIRECTOR LEGAL SERVICES

February 25, 1980

TO: Study Committee on Annexation

FROM: Deborah Schmidt, Researcher

RE: Polson v. Public Service Commission and most recent complaints to the PSC on provision of water and sewer services outside city limits

Through recent press accounts and testimony at public hearings, committee members learned of challenges to conflicting statutes and case law regarding provision of water and sewer services by cities outside of their corporate limits. Three questions surface as a result of the current complaints filed with the Public Service Commission (PSC) against the cities of Kalispell and Helena by Developers Diversified, which proposes to develop shopping centers near those cities:

1. Must a city provide water and sewer service to a particular entity within its service area?

2) May the city require consent to annexation as a condition of extending water or sewer service to a potential consumer?

3) If the city has no desire to annex the property in question, must it still provide the water and sewer service requested?

This memorandum will explain the relevant case law and statutes as well as the conditions resulting in the present complaints brought to the PSC. Without delving into the merits of Developers Diversified, Inc.'s case, which is presently in District Court in Kalispell, legislative intent on the issues will be traced, and options for clarification or resolution of the questions will be presented.

Polson v. Public Service Commission

In 1970, the Montana Supreme Court issued an opinion in Polson v. Public Service Commission, 155 Mont. 464, which constitutes one

element in the question of whether cities must provide water and sewer service outside their city limits. The suit arose as a result of the PSC's ordering of the City of Polson to furnish water for fire protection to an inn outside the corporate limits of the city but within its service area. The city had denied an application by the inn for a six inch tap line on the grounds that approval and subsequent use of the tap would most likely damage the city's water line because of its deteriorated condition. The city also cited as a reason for denial that it did not, as a public utility, supply fire protection in that manner outside the city limits. The PSC disagreed and ordered the city to supply the water for fire protection because fire protection was a business purpose for which water was being supplied by the city as a public utility and because the city had provided for such service in its rate schedule, which was applicable to its entire service area and not just within the city limits. The City of Polson appealed to district court, where the PSC's orders were upheld in all respects. An appeal was then brought to the Supreme Court, whose members upheld the orders of the PSC and district court. Thus, according to the Polson decision, cities must furnish water and sewer services to all entities within their service areas for uses that meet the requirements of 70-103, R.C.M. 1947 (now 69-3-101, MCA), as follows:

> **69-3-101. Meaning of term public utility.** The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:
>
> (1) heat;
>
> (2) street-railway service;
>
> (3) light;
>
> (4) power in any form or by any agency;
>
> → (5) water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;
>
> (6) telegraph or telephone service.
>
> History: En. Sec. 3, Ch. 52, L. 1913; re-en. Sec. 3881, R.C.M. 1921; re-en. Sec. 3881, R.C.M. 1935; R.C.M. 1947, 70-103(part); amd. Sec. 3, Ch. 631, L. 1979.

SB 296 (1971)

Six months following the issuance of the Polson decision, the 1971 Legislature considered and eventually adopted SB 296, sponsored by Senator Boylan. The sponsor introduced the bill primarily for the purpose of extending the authority of cities and towns to provide sewer service to customers outside their corporate limits in addition to the previously authorized water service. More importantly for purposes of this discussion, however, Senator

Drake added an amendment to SB 296 in the Senate Local Government Committee that permitted cities and towns to require consent to annexation of the affected property as a condition of extending water and sewer service to that parcel. This language was originally added to 11-1001 as subsection (4) of the R.C.M. 1947 and is now codified as a separate section in 7-13-4314, MCA:

> **7-13-4314. Annexation as a requirement for receiving service.** Any person, firm, or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town, as a condition to initiate such service, to consent to annexation of the tract of property served by the city or town. The consent to annexation is limited to that tract or parcel or portion of tract or parcel that is clearly and immediately, and not potentially, being serviced by the water or sewer service.
>
> History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(4).

Neither the minutes of the Senate Local Government Committee nor those of the House Affairs of Cities Committee clearly indicate whether committee members were aware of the recent Polson decision in their deliberations. (See Appendix A.) However the 1971 Legislature's action in passing SB 296 after the Court issued its opinion certainly modified the effect of the Polson decision in allowing the imposition by cities of conditions to receipt of water and sewer service outside municipal boundaries. To add to the confusion, the language of the statutes governing extension of water and sewer services in sections 7-13-4311 through 4314, MCA, permits rather than requires cities and towns to extend those services outside corporate limits. The Supreme Court seems to have expanded on this permissive language in holding that the City of Polson must supply water services to all property within a service area, once that service area is generally expanded outside city limits.

Extension of Services as Tool for Orderly Growth

In attempting to decipher the current state of both case law and statute on the subject of extension of services outside corporate boundaries, the historical importance of the use of such extensions by cities as a tool to promote orderly growth through annexation must be emphasized. In testimony presented before the study committee and throughout the general literature on annexation, the necessity of continuing to be able to use this tool reappears. In many cases, when cities were expanding and developing their water systems twenty or thirty years ago, they exchanged an easement for use of land by the City to locate a water main for a residential tap on the line. In some cases the city obtained a waiver of protest rights in future annexation efforts, but in many cases, no such waiver was requested or received. Recently, however, cities have generally demanded consent to future annexation as a condition of extending water and sewer services, and they

express concern over retaining the discretionary delivery of those services to areas outside their corporate boundaries. If cities are required by the courts, the legislature, or the Public Service Commission to give service outside their boundaries without being able to impose conditions, they will indeed lose much of the leverage that induces fringe areas to accept annexation.

From the discussion in the previous paragraphs, the answers to the first two questions on provision of services outside city limits emerge. First, according to the Polson decision, a city must provide service outside its corporate boundaries when the applicant is within the utility's service area. As evidenced by the two complaints currently before the PSC, the definition of what constitutes a "service area" becomes extremely important. In a future memorandum, I will provide further research into this question.

In addition, a city may clearly make consent to annexation a condition of providing service to outlying areas under current statute, but what is the answer to the third question of whether a city must provide service to adjacent areas if the city does not wish to annex the property and is serving other property outside the city limits? This is the question upon which the two current complaints before the PSC rest.

Developers Diversified, Inc. v. Cities of Helena and Kalispell

Appendices B and C contain the complaints currently before the PSC. In both instances, Developers Diversivied requested water and sewer service for areas the company plans to develop into major shopping centers. In both cases, the area is outside but adjacent to the city limits. Both the cities of Helena and Kalispell denied the request, holding that the properties in question were outside their service areas. Developers Diversified, of course disagrees.

The Public Service Commission will determine the validity of the two complaints in the near future, and I will not attempt to anticipate the Commission's decision or reasoning. However, these two situations demonstrate the need for possible clarification by the legislature of this issue. The committee may wish to recommend to the legislature how much discretion ought to be taken by cities in determining who may receive contract water and sewer services outside the city limits. In the past, cities have used this discretionary authority as a means to manage growth in their urban fringe areas. The committee might discuss the continued propriety and usefulness of this authority as a tool for orderly growth. Options the committee could consider include:

1) continue to allow some discretion by cities with more legislative guidelines as to how and when it may be exercised;

2) Restrict the use of this authority;

3) Allow the courts and the PSC to continue to decide the question on a case by case basis.

Details of how this language may be clarified can be developed following determination of these policy questions by the committee.

---------- BILL NO. ------

INTRODUCED BY ----------

BY REQUEST OF THE STUDY COMMITTEE ON ANNEXATION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE THE DISTINCTION BETWEEN RIGHTS OF RESIDENT AND NONRESIDENT FREEHOLDERS IN MATTERS OF ANNEXATION; AMENDING SECTIONS 7-2-4303, 7-2-4311 THROUGH 7-2-4314, 7-2-4325, 7-2-4501, 7-2-4502, 7-2-4601, 7-2-4606, 7-2-4704, 7-2-4705, 7-2-4710, 7-2-4741, AND 7-2-4751, MCA; AND REPEALING SECTIONS 7-2-4321 THROUGH 7-2-4324, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-2-4303, MCA, is amended to read:

"7-2-4303. Restrictions on annexation power. Land used for industrial or manufacturing purposes shall not be included in such city under the provisions of 7-2-4311 through 7-2-4314 ~~and-7-2-4321-through-7-2-4325~~ without the consent in writing of the owners of such land."

Section 2. Section 7-2-4311, MCA, is amended to read:

"7-2-4311. Annexation of contiguous land by ~~cities--of-the--first--class~~ municipalities. Any tracts or parcels of land which have been or may hereafter be platted into lots or blocks, streets, and alleys or platted for parks and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided in these codes, which platted or unplatted land shall be contiguous to any incorporated ~~city-of-the--first--class~~ municipality, may be embraced within the corporate limits thereof and the bounuaries of such ~~city--of--the--first--class~~ municipality extended so as to include the same in the manner provided in 7-2-4312 through 7-2-4314."

Section 3. Section 7-2-4312, MCA, is amended to read:

"7-2-4312. Resolution of intent ~~by-first-class-city~~ -- notice. When, in the judgment of any ~~city-council-of-a--city-of--the--first-class~~ municipal governing body expressed by a resolution duly and regularly passed and adopted, it will be to the best interest of such ~~city~~ municipality and the inhabitants of any contiguous platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed that the boundaries of such ~~city~~ municipality shall be extended so as to include the same within the corporate limits thereof, the city clerk of such ~~city~~ municipality shall:

(1) immediately notify in writing, addressed to the address to which tax notices are sent, all owners of property in the territory to be embraced; and

(2) cause a notice to be published in the newspaper

published nearest such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, at least once a week for 2 successive weeks."

Section 4. Section 7-2-4313, MCA, is amended to read:

"7-2-4313. Contents of notice -- protest period. The notice shall be to the effect that:

(1) such resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of such notice, such city clerk will receive expressions, in writing, of approval or disapproval of the proposed extensions of the boundaries of such ~~city--of--the first--class~~ municipality from freeholders of the territory proposed to be embraced therein."

Section 5. Section 7-2-4314, MCA, is amended to read:

"7-2-4314. Hearing on question of annexation -- resolution of annexation. (1) The clerk shall, at the next regular meeting of the ~~city--council-of-such-city-of-the first-class~~ municipal governing body after the expiration of said 20 days, lay before the same all communications in writing so received by him for its consideration. Except as provided in subsection (2), if after considering the same ~~such--council~~ the governing body shall duly and regularly pass and adopt a resolution to that effect, the municipal boundaries ~~of-such-city-of-the-first-class~~ shall be extended

so as to embrace and include such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed; the time when the same shall go into effect to be fixed by such resolution.

(2) Such resolution shall not be adopted by ~~such council~~ the municipal governing body if disapproved in writing by a majority of the ~~resident~~ freeholders of the territory proposed to be embraced, and no further resolutions relating to the annexation of said territory or any portion thereof may be considered or acted upon by the ~~council~~ governing body on its own initiative and without petition for a period of 1 year from the date of disapproval."

Section 6. Section 7-2-4325, MCA, is amended to read:

"7-2-4325. Consolidation of proceedings for two or more tracts. Whenever two or more adjacent tracts taken as a whole shall adjoin the city, they may be included in one resolution ~~under-7-2-4321-through-7-2-4325~~, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing."

Section 7. Section 7-2-4501, MCA, is amended to read:

"7-2-4501. Annexation of wholly surrounded land by ~~cities--of--the--first--class~~ municipalities. A ~~city-of-the-first-class~~ municipality may include as part of the ~~city~~ municipality any platted or unplatted tract or parcel of

land that is wholly surrounded by the ~~city~~ municipality upon passing a resolution of intent, giving notice, and passing a resolution of annexation. Except as provided in 7-2-4502, the provisions of 7-2-4312 through 7-2-4314 apply to these resolutions and the notice requirement."

Section 8. Section 7-2-4502, MCA, is amended to read:

"7-2-4502. Protest not available. Such land shall be annexed, if so resolved, whether or not a majority of the ~~resident~~ freeholders of the land to be annexed object."

Section 9. Section 7-2-4601, MCA, is amended to read:

"7-2-4601. Annexation by petition. (1) The boundaries of any incorporated city or town, whether heretofore or hereafter formed, may be altered and new territory or territories annexed thereto, incorporated and included therein, and made a part thereof upon proceedings being had and taken as provided in this part.

(2) The council or other legislative body of any such municipal corporation, upon receiving a written petition therefor containing a description of the new territory or territories asked to be annexed to the corporation and signed by not less than 33 1/3% of the registered electors of the territory proposed to be annexed, must without delay submit to the electors of the municipal corporation and to the registered electors residing in the territory or territories proposed by the petition to be annexed to the

corporation, the question whether the new territory or territories shall be annexed to, incorporated in, and made a part of the municipal corporation.

(3) The governing body of a municipality, upon receiving a written petition containing a description of territory requested to be annexed and signed by more than 50% of the ~~resident-freeholder-electors~~ freeholders of the territory to be annexed, need not submit the question of annexation to the qualified electors as provided in subsection (2). The governing body may approve or disapprove the petition upon its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation."

Section 10. Section 7-2-4606, MCA, is amended to read:

"7-2-4606. Resolution of annexation. (1) (a) If it is found that a majority of votes were cast in favor of the annexation, the city or town council or other legislative body shall, at a regular or special meeting held within 30 days thereafter, pass and adopt a resolution providing for such annexation.

(b) Such resolution shall recite that a petition has been filed with the said council or other legislative body with a sufficient number of signatures of 33 1/3% of the ~~resident--freeholder~~ registered electors of the territory proposed to be annexed; a description of the boundaries of

the territory or territories to be annexed; a copy of the resolution ordering a general or special election thereof, as the case may be; a copy of the notice of such election; the time and result of the canvass of the votes received in favor of annexation and the number thereof cast against annexation; and that the boundaries of such city or town, by such resolution, shall be extended so as to embrace and include such territory or territories as the same are described in the petition for annexation, which said resolution shall be incorporated in the minutes of said council or legislative body.

(2) A resolution adopted pursuant to 7-2-4601(3) must include a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the ~~resident--freeholder--electors~~ freeholders of the territory to be annexed; a description of the boundaries of the territory to be annexed; and a statement that the boundaries of the municipality are to be extended to include the territory described in the petition for annexation. The resolution shall be incorporated in the minutes of the governing body. Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607."

Section 11. Section 7-2-4704, MCA, is amended to read:

"7-2-4704. Definitions. The following terms where used

in this part have the following meanings except where the context clearly indicates a different meaning:

(1) "Contiguous" means any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Municipality" means any city or town under Montana law.

(3) ~~"Resident-freeholder"~~ "Freeholder" means a person who ~~maintains--his--residence--on-real-property-in-which-he~~ holds an estate of life or inheritance in real property or of which he is the purchaser ~~of-such-an-estate~~ under a contract for deed, some memorandum of which has been filed in the office of the county clerk and recorder."

Section 12. Section 7-2-4705, MCA, is amended to read:

"7-2-4705. Annexation by municipalities providing services. (1) The governing body of any municipality may extend the corporate limits of such municipality under the procedure set forth in this part upon the initiation of the procedure by the governing body itself.

(2) Whenever the ~~resident~~ freeholders situated outside the corporate boundaries of any municipality, but contiguous

thereto, desire to have real estate annexed to the municipality, they may file with the governing body of the municipality a petition bearing the signatures of >1% of the resident freeholders in the territory sought to be annexed, requesting a resolution stating the intent of the municipality to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in 7-2-4707 through 7-2-4713 and 7-2-4731(2)."

Section 13. Section 7-2-4710, MCA, is amended to read:

"7-2-4710. Protest. (1) For a period of 20 days after the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall receive expressions, in writing, of approval or disapproval of the proposed annexation from resident freeholders of the territory proposed to be annexed.

(2) If a majority of the said resident freeholders in writin, disapprove the proposed annexation, no further proceedings under this part shall be had relating to the territory proposed to be annexed or any part thereof for a period of 1 year from the date of such disapproval."

Section 14. Section 7-2-4741, MCA, is amended to read:

"7-2-4741. Right to court review when area annexed. (1) Within 30 days following the passage of an annexation ordinance under authority of this part, either a majority of the resident freeholders in the territory or the owners of

more than 75% in assessed valuation of the real estate in the territory who believe that they will suffer material injury by reason of the failure of the municipal governing body to comply with the procedure set forth in this part or to meet the requirements set forth in 7-2-4734 and 7-2-4735, as they apply to their property, may file a petition in the district court of the district in which the municipality is located seeking review of the action of the governing board and serve a copy of the petition on the municipality in the manner of service of civil process.

(2) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing."

Section 15. Section 7-2-4751, MCA, is amended to read:

"7-2-4751. Right to court review when area not annexed. (1) After the resident freeholders have properly petitioned the governing body of the municipality and the body has failed to pass a resolution of intent to annex within 60 days, the petitioners may file a complaint and a duplicate copy of the petition in the district court of the proper jurisdiction stating the reason why the proposed annexation should take place.

(2) The municipality shall be designated party defendant in the cause and shall be required to appear and answer as in other cases."

Section 10. Repealer. Sections 7-2-4321 through 7-2-4324, MCA, are repealed.

-End-

---------- BILL NO. ------

INTRODUCED BY ----------

BY REQUEST OF THE STUDY COMMITTEE ON ANNEXATION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE PROVISION OF SERVICES BY MUNICIPALITIES TO NEWLY ANNEXED AREAS; AMENDING SECTIONS 7-2-4205, 7-2-4305, 7-2-4506, AND 7-2-4610, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-2-4205, MCA, is amended to read:

"7-2-4205. Provision of services. In all cases of annexation under current Montana law, services will be provided according to a plan provided by the municipality as specified in ~~Title 7, chapter 2, part 47~~ 7-2-4732, except:

(1) as provided in 7-2-4736; or

(2) where otherwise mutually agreed upon by the municipality and the freeholders of the area to be annexed."

Section 2. Section 7-2-4305, MCA, is amended to read:

"7-2-4305. Provision of services. In all cases of annexation under current Montana law, services will be provided according to a plan provided by the municipality as specified in ~~Title 7, chapter 2, part 47~~ 7-2-4732, except:

(1) as provided in 7-2-4736; or

(2) where otherwise mutually agreed upon by the municipality and the freeholders of the area to be annexed."

Section 3. Section 7-2-4506, MCA, is amended to read:

"7-2-4506. Provision of services. In all cases of annexation under current Montana law, services will be provided according to a plan provided by the municipality as specified in ~~Title 7, chapter 2, part 47~~ 7-2-4732, except:

(1) as provided in 7-2-4736; or

(2) where otherwise mutually agreed upon by the municipality and the freeholders of the area to be annexed."

Section 4. Section 7-2-4610, MCA, is amended to read:

"7-2-4610. Provision of services. In all cases of annexation under current Montana law, services will be provided according to a plan provided by the municipality as specified in ~~Title 7, chapter 2, part 47~~ 7-2-4732, except:

(1) as provided in 7-2-4736; or

(2) where otherwise mutually agreed upon by the municipality and the freeholders of the area to be annexed."

-End-

---------- BILL NO. ------

INTRODUCED BY ----------

BY REQUEST OF THE STUDY COMMITTEE ON ANNEXATION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO DELETE CERTAIN RESTRICTIONS ON THE ANNEXATION OF WHOLLY SURROUNDED LAND; TO PROHIBIT STRIP ANNEXATION; AMENDING SECTIONS 7-2-4301, 7-2-4401, 7-2-4503, 7-2-4504, AND 7-2-4734, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-2-4301, MCA, is amended to read:

"7-2-4301. What constitutes contiguous lands -- prohibition against strip annexation. (1) Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by the lateral section of a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

(2) A city or town may annex only those areas that can be reasonably assumed to be used for orderly development of the city or town; the city or town may not annex these areas if they will be connected to the city or town only by a strip of land less than 20 feet wide or by a strip of land containing only land within the right-of-way of a public highway or street considered longitudinally."

Section 2. Section 7-2-4401, MCA, is amended to read:

"7-2-4401. What constitutes contiguous land for purpose of part -- prohibition against strip annexation. (1) The land proposed to be annexed to a municipality under the provisions of this part shall be deemed contiguous to such municipality even though such land may be separated from such municipality by the lateral section of a street or other roadway, a sidewalk, a public way of any kind, an irrigation ditch or drainage ditch, or some other strip too small for the erection of houses.

(2) A municipality may annex only those areas that can be reasonably assumed to be used for orderly development of the municipality; the municipality may not annex these areas if they will be connected to the municipality only by a strip of land less than 20 feet wide or by a strip of land containing only land within the right-of-way of a public highway or street considered longitudinally."

Section 3. Section 7-2-4503, MCA, is amended to read:

"7-2-4503. Restrictions on annexation power. Land shall not be annexed under this part whenever the land is used:

(1) for bona fide agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing

purpose~~)~~ or

~~(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto purposes.~~"

Section 4. Section 7-2-4504, MCA, is amended to read:

"7-2-4504. What constitutes contiguous lands -- prohibition against strip annexation. (1) Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by the lateral section of a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

(2) A city or town may annex only those areas that can be reasonably assumed to be used for orderly development of the city or town; the city or town may not annex these areas if they will be connected to the city or town only by a strip of land less than 20 feet wide or by a strip of land containing only land within the right-of-way of a public highway or street considered longitudinally."

Section 5. Section 7-2-4734, MCA, is amended to read:

"7-2-4734. Standards to be met before annexation can occur. A municipal governing body may extend the municipal

corporate limits to include any area which meets the following standards:

(1) It must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) The annexation of the area must be reasonably assumed to be used for orderly development of the municipality; the municipality may not annex an area if it will be connected to the municipality only by a strip of land less than 20 feet wide or by a strip of land containing only land within the right-of-way of a public highway or street.

~~(2)~~(3) No part of the area may be included within the boundary of another incorporated municipality.

~~(3)~~(4) It must be included within and the proposed annexation must conform to a comprehensive plan as prescribed in Title 76, chapter 1.

~~(4)~~(5) No part of the area may be included within the boundary, as existing at the inception of such attempted annexation, of any fire district organized under any of the provisions of part 21, chapter 33, if the fire district was originally organized at least 10 years prior to the inception of such attempted annexation. However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation as provided in 7-33-2127."

-End-

47th Legislature LC 0119/01

---------- BILL NO. ------

INTRODUCED BY ----------

BY REQUEST OF THE STUDY COMMITTEE ON ANNEXATION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT DELETING RESTRICTIONS ON ANNEXATION OF LAND USED FOR INDUSTRIAL, MANUFACTURING, AND OTHER PURPOSES; AMENDING SECTION 7-2-4608, MCA; REPEALING SECTION 7-2-4303, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-2-4608, MCA, is amended to read:

"7-2-4608. Restrictions on annexation power. (1) No territory which, at the time such petition for such proposed annexation is presented to such council or legislative body, forms any part of any incorporated city or town shall be annexed under the provisions of this part.

(2) No parcel of land which, at the time such petition for such proposed annexation is presented to such council or legislative body, is used in whole or in part for ~~bona fide agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto~~ purposes shall be annexed under the provisions of this part."

Section 2. Repealer. Section 7-2-4303, MCA, is repealed.

-End-

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE STUDY COMMITTEE ON ANNEXATION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA SUBDIVISION AND PLATTING ACT TO PROVIDE FOR JOINT HEARINGS AND COORDINATION OF REQUIREMENTS FOR ANNEXATION WHENEVER POSSIBLE; AMENDING SECTIONS 76-3-601 AND 76-3-605, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-601, MCA, is amended to read:

"76-3-601. Submission of preliminary plat for review. (1) Except where a plat is eligible for summary approval, the subdivider shall present to the governing body or the agent or agency designated thereby the preliminary plat of the proposed subdivision for local review. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat shall be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) This section and 76-3-604, 76-3-605, and 76-3-608 through 76-3-610 do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

Section 2. Section 76-3-605, MCA, is amended to read:

"76-3-605. Hearing on preliminary plat. (1) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment, to

determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.

~~(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the preliminary plat and annexation whenever possible.~~

~~(2)~~(3) Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

~~(3)~~(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing."

-End-

---------- BILL NO. ------

INTRODUCED BY ----------

BY REQUEST OF THE STUDY COMMITTEE ON ANNEXATION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW MUNICIPALITIES TO SELECT THE ANNEXATION PROCEDURE APPROPRIATE TO EACH ANNEXATION SITUATION; AMENDING SECTIONS 7-2-4204, 7-2-4304, 7-2-4408, 7-2-4505, 7-2-4609, AND 7-2-4718, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-2-4204, MCA, is amended to read:

"7-2-4204. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part."

Section 2. Section 7-2-4304, MCA, is amended to read:

"7-2-4304. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part."

Section 3. Section 7-2-4408, MCA, is amended to read:

"7-2-4408. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part."

Section 4. Section 7-2-4505, MCA, is amended to read:

"7-2-4505. Applicability of part. (1) When the proceedinns for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part."

Section 5. Section 7-2-4609, MCA, is amended to read:

"7-2-4609. Applicability of part. (1) This part does not repeal parts 43 and 45 having reference to extension of the corporate limits of cities of the first, second, and third classes to include contiguous land but provides an alternative method that the municipal governing body may in its discretion choose to use for the annexation of territory or territories to municipal corporations.

(2) When any proceedings for annexation of territory or territories to any municipal corporation are commenced under this part, the provisions of this part and no other apply to such proceedings.

(3) When the proceedings for annexation of territory

to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated."

Section 6. Section 7-2-4718, MCA, is amended to read:

"7-2-4718. Construction. (1) The method of annexation authorized in this part is independent from other methods of annexation authorized by state law.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part."

-End-

APPENDIX M - RECOMMENDED BY COMMITTEE

47th Legislature LC 0122/01

---------- BILL NO. ------

INTRODUCED BY ----------

BY REQUEST OF THE STUDY COMMITTEE ON ANNEXATION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT PRESCRIBING CONDITIONS UNDER WHICH LAND IS PRESUMED TO BE ANNEXED AND MAY BE SO RECORDED."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

Section 2. Codification instruction. Section 1 is intended to be codified as an integral part of Title 7, chapter 2, parts 42 through 47, and the provisions of Title 7, chapter 2, parts 42 through 47, apply to section 1.

-End-

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---------- BILL NO. ------

INTRODUCED BY ----------

BY REQUEST OF THE STUDY COMMITTEE ON ANNEXATION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR MUNICIPAL ANNEXATION OF HIGH-DENSITY LAND UNDER CERTAIN CONDITIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Annexation of high-density land. (1) A municipality may annex land contiguous to its corporate limits if:

(a) there are within the external boundaries of the land area to be annexed contiguous parcels, each of which meets a density of not less than four dwelling units per acre; or

(b) the land being annexed is a planned-unit or cluster development having an overall density of four dwelling units per acre.

(2) The governing body of the municipality must adopt a resolution of intent to annex the area and follow the procedures required in 7-2-4311 through 7-2-4314, except that the protest provisions of 7-2-4314(2) do not apply.

(3) In addition to the requirements of 7-2-4311 through 7-2-4314(1), the governing body of the municipality shall publish with the notice of intent to annex:

(a) a statement detailing the estimated costs in taxes and fees for city services for a typical property within the municipality and within the area to be annexed; and

(b) a statement detailing how the electors in the area to be annexed will be equitably represented in the municipal government and the date and type of elections affecting the area proposed to be annexed that will occur within a year of the effective date of the annexation.

(4) The governing body of the municipality shall provide services to the newly annexed area according to a plan adopted pursuant to 7-2-4732, except:

(a) when the municipality and freeholders of the area to be annexed mutually agree to the continued provision of services by a rural fire district, other service district, or private service provider; and

(b) as required under the provisions of 7-2-4236.

Section 2. Codification instruction. Section 1 is intended to be codified as an integral part of Title 7, chapter 2, part 43, and the provisions of Title 7, chapter 2, part 43, apply to section 1.

-End-

LC 0118/01

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